

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 99-CV-2496 (GK)
v.	)	
	)	Next Court Appearance:
PHILIP MORRIS USA INC. (f/k/a	)	Trial (Ongoing)
PHILIP MORRIS INCORPORATED), <u>et</u>	)	
<u>al.</u> ,	)	
	)	
Defendants.	)	

WRITTEN DIRECT TESTIMONY

OF

MICHAEL E. SZYMANCZYK

Submitted by Joint Defendants Pursuant to Order #471  
(As Revised)

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1 I. INTRODUCTION/BACKGROUND

2 A. PERSONAL BACKGROUND

3 Q: Could you please state your name?

4 A: Michael Szymanczyk.

5 Q: Where do you work?

6 A: Philip Morris USA, Inc.

7 Q: Is that otherwise known as Philip Morris USA?

8 A: Yes.

9 Q: What is the business of Philip Morris USA?

10 A: Philip Morris USA is in the business of developing, manufacturing, marketing and selling  
11 cigarettes.

12 Q: In what country does Philip Morris USA manufacture and sell cigarettes?

13 A: The United States and its possessions.

14 Q: What is your current position and title at Philip Morris USA?

15 A: Chairman and Chief Executive Officer.

16 Q: What is your primary responsibility?

17 A: Seeing that we achieve the Mission of the Company.

18 Q: Before we discuss the Mission of the Company in more detail, are you compensated  
19 for achieving the Mission of the Company?

20 A: Yes, I am compensated based on the progress we make toward our Mission.

21 Q: What are your forms of compensation and how much did you receive last year?

22 A: My compensation is a matter of public record that is filed with the SEC and published  
23 annually to Altria shareholders. In the last SEC filing, my 2004 compensation was reported. I

1 was paid a salary of \$1,032,333, and I received an incentive compensation award of \$1.8 million.  
2 In addition, I participate in a Long-Term Incentive Plan under which the Altria Group Board of  
3 Directors may award cash incentive payments to certain executives every third year. There was  
4 no payout under this plan in 2004. In addition, I received a restricted stock award valued at  
5 \$2,109,135, as well as dividends on restricted stock totaling \$510,085. I also received options to  
6 buy 151,991 shares of Altria stock at a price equal to Altria's stock price as of the date of each  
7 grant. The company also allocated \$154,850 to me for 2004 under tax-qualified and  
8 nonqualified defined contribution plans. These plans are akin to a 401(k) or profit sharing plan,  
9 and all company employees are eligible to participate at the same percentage of compensation  
10 level. I also received what is called "other compensation," which includes things like a company  
11 car allowance, the use of corporate aircraft, and financial planning services totaling \$162,800. In  
12 addition to profit sharing plans I also accrue benefits under defined benefit plans. I also  
13 participated in company benefit plans like medical, dental, vision and vacation, as do all  
14 company employees.

15 Q: Do you have any contractual right to continue to receive this level of compensation?

16 A: No, I am an employee-at-will.

17 Q: How do you go about achieving the Mission of Philip Morris USA?

18 A: By defining and communicating the direction of the company, managing and allocating  
19 resources, making sure we are developing the individual and organizational capability to advance  
20 our Mission and having systems, measurements and capabilities in place to make sure we know  
21 where we stand relative to our Mission.

22 Q: Do you have any other responsibilities?

1 A: Under Virginia law I must use my good faith business judgment to act in the best  
2 interests of the corporation.

3 Q: Is there anyone above you in the chain of command as far as Philip Morris USA is  
4 concerned?

5 A: No.

6 Q: When did you become Chairman and CEO of Philip Morris USA?

7 A: I think I should clarify something. On November 1, 1997, I became President and CEO.  
8 On April 25, 2002, I became Chairman of Philip Morris USA and relinquished my CEO  
9 responsibilities. I then reassumed my CEO position on August 27, 2002, and have been  
10 Chairman and CEO since that time.

11 Q: Where is the headquarters of Philip Morris USA located?

12 A: Richmond, Virginia.

13 Q: I take it that is the location where you work?

14 A: Yes.

15 Q: Is Philip Morris USA a defendant in this case?

16 A: Yes.

17 Q: Mr. Szymanczyk, I am going to ask you a lot of questions about Philip Morris USA  
18 and the company's business, but before I do, I want the court to learn a little about you.  
19 Are you married?

20 A: Yes, I am.

21 Q: How long have you been married?

22 A: 34 years in June.

23 Q: Do you have any children?

1 A: Yes. I have three children.

2 Q: And how old are you?

3 A: I am 56 years old.

4 Q: Where did you grow up?

5 A: I grew up in Lansing, Illinois. It is a town on the south side of Chicago on the Indiana

6 border.

7 Q: What kind of town was Lansing, Illinois?

8 A: It was near the steel mills in Gary, Indiana. It was a working class town.

9 Q: What did your parents do?

10 A: My mom took care of the household. My dad was a salesman and later a first-level

11 manager at Sears in Gary, Indiana. He worked there for 25 years.

12 Q: Did you have brothers and sisters?

13 A: I have one older sister.

14 Q: Could you also summarize your educational background, starting with grade school

15 through college?

16 A: I attended public schools in Lansing, graduated from high school in 1967 and then went

17 to Indiana University in Bloomington, Indiana.

18 Q: Why did you go to Indiana University?

19 A: When I was in high school I was a pretty good basketball player, so when I graduated I

20 was fortunate enough to be offered a basketball scholarship to go to Indiana. My parents did not

21 have the money to pay for my college, so I accepted the basketball scholarship and went to

22 Indiana for four years of college.

23 Q: What did you major in at Indiana?

1 A: I majored in finance.

2 Q: Did you graduate from Indiana?

3 A: Yes.

4 Q: What year was that?

5 A: June 1971.

6 Q: Did anything else happen that year?

7 A: Yes. I graduated from college, got married and started working for Procter & Gamble all

8 in the same week.

9 Q: So, Procter & Gamble was your first job out of college?

10 A: Yes.

11 Q: What kind of company is Procter & Gamble?

12 A: It is a large consumer packaged products company that sells everything from Pampers

13 diapers to Tide detergent. It sells a range of consumer products.

14 Q: How long did you stay at Procter & Gamble?

15 A: 17 years.

16 Q: What year did you leave Procter & Gamble?

17 A: 1987.

18 Q: Can you give us a general description of the jobs you held while working at Procter

19 and Gamble?

20 A: I started as a salesman in the bar soap and household cleaning products division of

21 Procter & Gamble. I was headquartered in Louisville, Kentucky and called on grocery stores up

22 and down the Ohio River. Over the course of 17 years I had 17 different jobs. I went up the

23 ranks of the sales organization and had some assignments in other areas related to marketing and



1 developing products and ultimately I became the general manager of Procter & Gamble's bar  
2 soap business.

3 Q: What was your primary business experience at Procter & Gamble?

4 A: I was involved in sales, marketing and general management. Toward the end of my  
5 tenure with Procter & Gamble I worked on new organizational models that were precursors for  
6 how Procter & Gamble does business today. I worked on redesigning and consolidating the  
7 companies' seven sales divisions, changed how the organizations dealt with customers and  
8 worked with organizational development experts and systems design experts in building a model  
9 for restructuring Procter & Gamble's sales organization.

10 Q: Why did you leave Procter & Gamble?

11 A: I had been with Procter & Gamble for approximately 17 years and liked the company, but  
12 was offered a significant opportunity with Kraft Foods in Chicago where a number of former  
13 Procter & Gamble executives also worked. My wife and I decided to make the change.

14 Q: What year did you start at Kraft Foods, Inc.?

15 A: 1988.

16 Q: What was your position at Kraft?

17 A: I was Vice President of Sales.

18 Q: Again, I do not want to get into too much detail, but could you please provide a  
19 general description of Kraft?

20 A: At that time, Kraft was a large company making cheese products, dry grocery products  
21 like Kraft Macaroni and Cheese, Kraft Mayonnaise and Philadelphia Cream Cheese.

22 Q: How long did you stay at Kraft?

23 A: Approximately two years.

1 Q: While you were at Kraft, was there a change in corporate ownership in Kraft?

2 A: Yes. There was.

3 Q: What was the change?

4 A: Well, Altria Group Inc., which was known as Philip Morris Companies, Inc. at that time,

5 purchased Kraft.

6 Q: When did Altria buy Kraft?

7 A: The fall of 1988.

8 Q: Can you generally describe your responsibilities and the business experience at

9 Kraft?

10 A: Kraft wanted to significantly improve its sales organization. During the time I was there

11 we restructured it, installed a specific set of cultural values, new college recruiting and training

12 programs, and established new operating principles.

13 Q: What was your position at the time you left?

14 A: Vice President of Retail Operations.

15 Q: When did you leave Kraft?

16 A: The Fall of 1989.

17 Q: What company did you go to work for after you left Kraft?

18 A: I went to work for Swift-Eckrich.

19 Q: What type of company was that?

20 A: It was a processed meat company that made lunchmeats and hot dogs.

21 Q: Did they make any products I might recognize?

22 A: They made Butterball turkeys and Swift processed meats.

23 Q: Why did you decide to go with that company?

1 A: It was a unique situation. It was a smaller company than I had ever worked for before  
2 that time and was a privately-held company. My job was to help prepare the business to be sold.  
3 Q: What was your position?  
4 A: Senior Vice President.  
5 Q: What were your responsibilities?  
6 A: I was responsible for all of the various distribution systems the business had, as well as  
7 some strategic planning responsibilities.  
8 Q: How long did you stay at Swift-Eckrich?  
9 A: I was there a little less than a year.  
10 Q: Why did you leave?  
11 A: We were successful in selling the company to ConAgra.  
12 Q: What was the name of the next company you went to work for?  
13 A: Philip Morris USA, which was known as Philip Morris Incorporated at that time.  
14 Q: When did you begin to work at Philip Morris USA U.S.A.?  
15 A: October of 1990.  
16 Q: Was that the first time you had ever worked in the tobacco industry?  
17 A: Yes.  
18 Q: How were you first contacted regarding a possible position at Philip Morris USA?  
19 A: When we sold the Swift-Eckrich business I had to decide whether to go work for  
20 ConAgra or look for other opportunities. I was contacted by a number of companies when it  
21 became known that Swift was being sold to ConAgra. Philip Morris Companies was one of  
22 those companies. The Senior Vice President of Human Resources of what was known as Philip

1 Morris Companies, Inc. then, who knew me when I was at Kraft, contacted me to see if I would  
2 come to New York to work in the tobacco business.

3 Q: What position did you discuss?

4 A: They wanted me to consider becoming Senior Vice President of Sales for Philip Morris  
5 USA.

6 Q: At that time, did you have any hesitation about going to work in the tobacco  
7 business?

8 A: Yes.

9 Q: Can you explain why?

10 A: I had always been involved in businesses like soap and food. I was hesitant because I  
11 viewed the tobacco business as a controversial business.

12 Q: At that time, did you personally believe that selling cigarettes was by its nature a  
13 controversial business?

14 A: Yes. I did.

15 Q: Why did you think it was controversial?

16 A: I felt it was controversial because I believed the product harms people's health.

17 Q: By the way, were you a smoker at the time you were deciding whether to work for  
18 Philip Morris USA?

19 A: No.

20 Q: Had you smoked earlier in your life?

21 A: Occasionally.

22 Q: Are you a regular smoker as of today?

23 A: No.

1 Q: And you eventually accepted the position at Philip Morris USA in October of 1990 is  
2 that correct?

3 A: Yes.

4 Q: What was the title of the position you accepted?

5 A: Senior Vice President of Sales.

6 Q: What was your understanding of the company's reason for wanting to hire you?

7 A: The company felt that the business was changing. Based on my experience with  
8 changing large organizations, the company wanted me to come in and improve Philip Morris  
9 USA's sales organization.

10 Q: You said you had some hesitation. Why did you decide to accept the position?

11 A: Initially, I declined to interview for the job. But Philip Morris USA had a good  
12 reputation in the business community. Also, in talking to people, I realized that this was the kind  
13 of business that needed good people. I thought I could add value to the business. Combining  
14 those things together, I decided to take the position. I thought that based on my prior experience  
15 in changing business organizations that I could add value to the company.

16 Q: What were you generally responsible for as Senior Vice President of Sales of Philip  
17 Morris USA?

18 A: I was responsible for the distribution of the product through the wholesaler and retailer  
19 system. We sell cigarettes to wholesalers who sell them to retailers who sell them to consumers.  
20 I had 3,000 people who called on all of the retailers and wholesalers who sold the company's  
21 products.

22 Q: In sales, you are dealing with wholesalers and retailers, rather than consumers,  
23 correct?

1 A: Yes.

2 Q: Does Philip Morris USA sell directly to consumers?

3 A: No, it does not.

4 Q: To whom did you report?

5 A: I reported to the President and CEO of Philip Morris USA.

6 Q: How long did you hold that position of Senior Vice President of Sales at Philip

7 Morris USA?

8 A: About four years.

9 Q: What was your next position?

10 A: I was promoted to Executive Vice President of Marketing and Sales.

11 Q: What were your new job responsibilities?

12 A: I was responsible for the marketing, market research and sales organizations. I had three

13 senior vice presidents reporting to me.

14 Q: What is the basic difference between marketing and sales?

15 A: Marketing is responsible for communicating about the product to our adult consumers

16 and sales deals with wholesalers and retailers.

17 Q: How long did you hold the position of Executive Vice President of Marketing and

18 Sales?

19 A: About two and a half years.

20 Q: Did you receive another promotion in June 1997?

21 A: Yes.

22 Q: To what position were you promoted?

23 A: Chief Operating Officer of Philip Morris USA.

1 Q: In the organizational structure of Philip Morris USA, where did that place you?  
2 A: I was second in command.  
3 Q: What were your duties and responsibilities in that job?  
4 A: I kept the responsibilities of my old job and I added research and development and  
5 manufacturing.  
6 Q: How long did you remain the COO of Philip Morris USA?  
7 A: About 5 months.  
8 Q: What happened at that time?  
9 A: On November 1, 1997, I was promoted to President and Chief Executive Officer.  
10 Q: What caused Philip Morris USA to appoint a new CEO?  
11 A: The prior CEO retired.  
12 Q: Can you explain some of the issues that the company was facing at that time?  
13 A: It was a turbulent time for Philip Morris USA. Most of the Attorneys General were suing  
14 Philip Morris USA for large sums of money and alleging that Philip Morris USA had engaged in  
15 past misconduct. Legislative efforts had also been made to settle the litigation on a global basis,  
16 but it had become clear that the legislation was going to fail. We had just settled the Mississippi  
17 and Florida Attorney General actions. Our reputation was declining in the business community  
18 and new lawsuits were being filed all over the country.  
19 Q: What prepared you to deal with this environment?  
20 A: I am not sure anything could prepare you for the circumstances I faced during my time  
21 as CEO, but I believe my experience in changing organizations has helped prepare me to deal  
22 with the changes that I believed needed to be made given what Philip Morris USA was facing as  
23 a company.

1 Q: Earlier you mentioned that Philip Morris USA Inc. used to be called Philip Morris  
2 Incorporated, correct?

3 A: Yes.

4 Q: When did Philip Morris USA change its name?

5 A: January 15, 2003.

6 Q: Why did Philip Morris USA change its name?

7 A: We used to be known as Philip Morris Incorporated. Philip Morris USA only sells  
8 cigarettes in the United States and its possessions. We felt the new name more accurately  
9 represented the business of the company.

10 B. COMPANY BACKGROUND

11 Q: What is Altria Group, Inc.?

12 A: It is a holding company or parent company. It owns several companies, including Philip  
13 Morris USA.

14 Q: What type of oversight does Altria have as a parent company?

15 A: It is a separate corporation that owns our stock and makes available some centralized  
16 services. It is a publicly held company which is primarily concerned with protecting the interests  
17 of its shareholders. They are not involved in the day-to-day management of Philip Morris USA.

18 Q: Let me focus on your company, Philip Morris USA, you said your company sells  
19 cigarettes in the United States. How many major brands of cigarettes does Philip Morris  
20 USA make and sell?

21 A: Philip Morris USA manufactures many brands. However, there are four brands for which  
22 we provide consumer marketing support.

23 Q: What do you mean by providing brand consumer marketing support?



1 A: We spend money communicating with consumers through things like direct mail, retail  
2 promotions and point of sale signage, our Indy Racing Team sponsorship and adult-only events.  
3 Q: Could you please name the brands that Philip Morris USA supports in its brand  
4 consumer marketing efforts?  
5 A: Marlboro, Virginia Slims, Parliament and Basic.  
6 Q: How many employees does Philip Morris USA have?  
7 A: About 11,500.  
8 Q: How many cigarette manufacturing facilities does Philip Morris USA have?  
9 A: Two  
10 Q: Where are they located?  
11 A: Richmond, VA and Cabarrus County, NC.  
12 Q: Did the company have a third major cigarette manufacturing facility when you  
13 became CEO?  
14 A: Yes.  
15 Q: What happened to that facility?  
16 A: It was phased out of operation in 2000.  
17 Q: Why was it phased out?  
18 A: This is a declining industry. Our volume has declined over the years. We did not have  
19 enough volume to support three factories, so we had to close one.  
20 Q: Earlier you testified that you became CEO during a turbulent time for the company,  
21 correct?  
22 A: Yes.

1 Q: When you became the CEO during these turbulent times, with allegations of past  
2 misconduct by Philip Morris USA, did you believe that you were given the authority --  
3 within the corporation's fiduciary guidelines -- to propose whatever changes in Philip  
4 Morris USA's business practices that you determined to be appropriate under the  
5 circumstances and to develop a new direction for Philip Morris USA?

6 A: Yes. I believed I had that authority.

7 Q: Based on what was going on at that time, what did you conclude as the new CEO?

8 A: When I became CEO in late 1997, it was clear to me that Philip Morris USA had  
9 numerous strengths: Great brands, great resources and, most of all, great people. Honest, hard-  
10 working people with a passion to succeed, a drive for creativity, a focus on quality and a  
11 willingness to share and do good things. However, it was also clear to me that Philip Morris  
12 USA was out of alignment with society's expectations of a socially responsible company. We  
13 were being sued by a large number of state attorneys general and society was calling for a  
14 fundamental change in the way we did business. My belief was that the company had been  
15 focused on satisfying its consumers and its shareholder and that going forward that was not  
16 going to be enough. At the time, it seemed to me that our society expected certain conduct and  
17 behavior from tobacco companies because they sell a dangerous product. I thought our society  
18 expected tobacco companies to work to stop underage smoking in this country. I also thought  
19 our society expected tobacco companies to provide more information regarding their products. I  
20 thought at the time I became CEO that society had concluded that Philip Morris USA was not  
21 doing these things in the way that society had come to expect.

22 Q: What did you decide to do about that?

1 A: I decided to steer the company in a direction that was consistent with societal  
2 expectations and was consistent with what I thought a responsible company should do. I created  
3 a Mission Statement and worked with my Senior Team to develop a set of Core Values to begin  
4 this process.

5 Q: We are going to be asking you many questions as to changes that have occurred in  
6 Philip Morris USA's business practices during the past seven and one-half years that you  
7 have been Philip Morris USA's CEO. We want the Court to understand how Philip Morris  
8 USA's current business practices have evolved in recent years. Do you understand that one  
9 of the major issues in this case is whether there is a reasonable likelihood that Philip  
10 Morris USA would engage in fraudulent conduct in the future?

11 A: Yes. I understand that is a major issue in this case. I am prepared to address that issue  
12 during the remainder of my testimony.

13 II. PHILIP MORRIS USA'S BUSINESS PRACTICES ARE DEFINED BY ITS  
14 MISSION STATEMENT AND CORE VALUES

15 A. MISSION STATEMENT/CORE VALUES

16 Q: How would you describe the term "corporate culture"?

17 A: A corporate culture is a combination of the direction of a company and the principles that  
18 guide the behavior of the people in pursuit of that direction. In our company the Mission  
19 provides our employees with direction, and the principles that guide our employees behavior are  
20 called our Core Values.

21 Q: Do you think that having a Mission and Core Values, as you have just described  
22 them, is important to a company?

23 A: I believe it is the appropriate way to run a company.

24 Q: Why is having a Mission in a company important?

1 A: The chief executive of a company has the responsibility to provide the direction for the  
2 company and to make sure everyone understands what it is and what their role is in achieving it.  
3 The Mission defines the direction and, in our case, includes stakeholder goals that further define  
4 the work to be done. This type of structure ensures that there is no misunderstanding within the  
5 organization regarding the work that needs to be done.

6 Q: Why are Core Values important?

7 A: Core Values describe the principles that guide the behavior of the organization in pursuit  
8 of the Mission. They describe boundaries for employee behavior and create an acceptable work  
9 environment. They also describe what others can expect of us relative to our behavior.

10 Q: After becoming the CEO did you try to assess whether Philip Morris USA had a  
11 well defined mission that you were satisfied with?

12 A: Prior to my becoming CEO of the company there had been some work done on the  
13 subject by the prior CEOs. But the Mission and Values were not well-defined.

14 Q: What did you do as President and CEO of the Company to clearly define and  
15 articulate what the corporate culture of Philip Morris USA should be?

16 A: I personally wrote the company Mission Statement. I then led my Senior Team in  
17 developing a set of Core Values for everyone in the company.

18 Q: Could you provide an idea of the time period when all of this happened?

19 A: It occurred when I first became CEO.

20 Q: When did you complete the Mission Statement and Core Values?

21 A: Around May of 1998.

22 Q: Let me show you JDEM-040281. Could you please look at that document and  
23 describe what that document is?

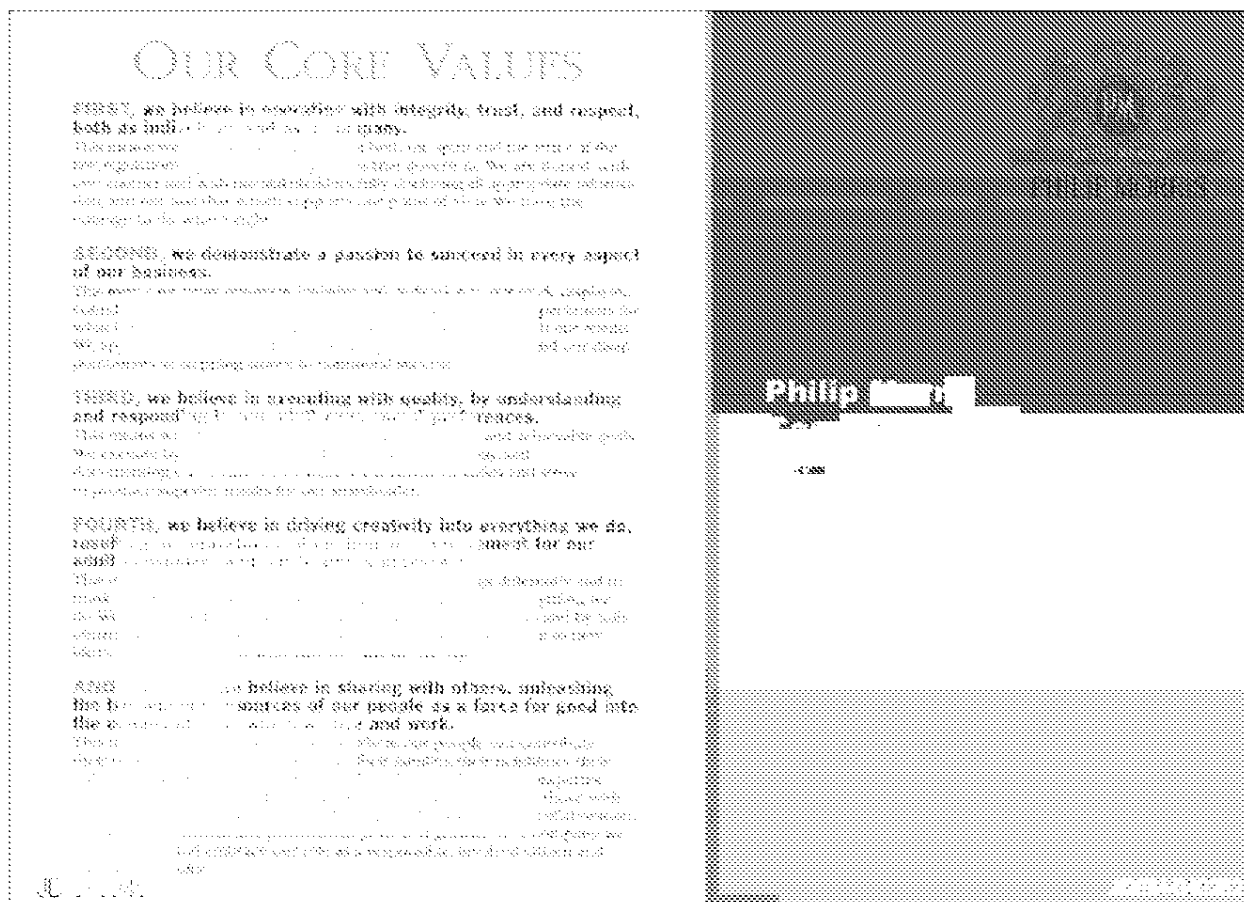
1 A: Well, it is a chart showing the original Mission Statement.



2

3 Q: Let me show you JDEM-040282, what is represented on that chart?

4 A: That lists the original Core Values.



Q: When you first announced the Mission Statement and Core Values, did you distribute them?

A: Yes, we distributed them in company publications and on a paper reference card. On one side of the card was the Mission Statement. On the other side of the card were the Core Values.

Q: For whose benefit was that card prepared?

A: For the benefit of all of the employees of the company.

Q: Was that document prepared in the regular course of Philip Morris USA's business?

A: Yes.

Q: Has this document changed at all?

A: Yes

1 Q: How has it changed?

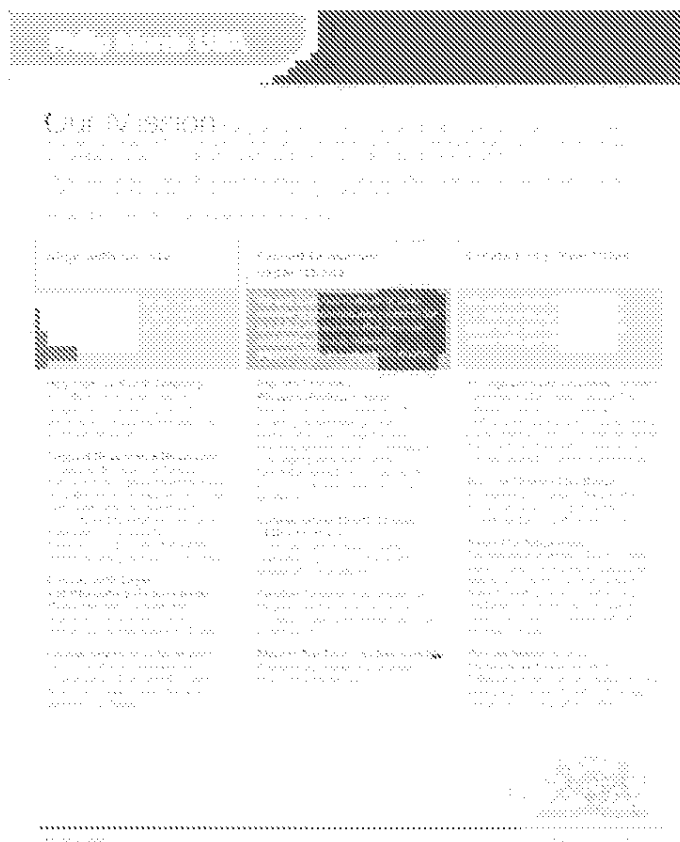
2 A: We have made some minor revisions to our stakeholder goals and added a stakeholder  
3 goal based on what we have learned in engaging our stakeholders. We have also adopted three  
4 core strategies that help describe the key areas of work that need to be done to achieve our  
5 Mission.

6 Q: We are going to talk about Philip Morris USA's stakeholder goals later on. For now  
7 could you define what you mean by stakeholder?

8 A: Stakeholders are groups of people who have an interest in the outcome of what the  
9 company does. For example, parents have an interest in what the company does to keep their  
10 kids from smoking. Shareholders have a financial interest in the performance of the company.

11 Q: Let me show you JDEM-040312, what is this?

12 A: It is a card that contains the current Mission Statement and Stakeholder Goals. The Core  
13 Values of Philip Morris USA are listed on the other side of the card.



JD-035041

JDSM-543517

**Q:** Was this also prepared in the ordinary course of business?

A: Yes.

Q: And this Mission Statement is also reflected on Philip Morris USA's website, correct?

A: Yes it is.

Q: Can you read the first paragraph immediately after "OUR MISSION"?

A: "Our goal is to be the most responsible, effective and respected developer, manufacturer and marketer of consumer products, especially products intended for adults. Our core business is manufacturing and marketing the best quality tobacco products available to adults who use them."



1 Q: Who crafted that statement?

2 A: I did.

3 Q: What were you trying to communicate with that statement?

4 A: That we have a mission of responsibility. I believe that if you are in a business that  
5 makes a product for adults, particularly a product that is harmful, you have a very important  
6 responsibility regarding the conduct of your business.

7 Q: To whom is the Mission being communicated?

8 A: The Mission was originally crafted for Philip Morris USA's employees, but it is available  
9 to the public on the company website.

10 Q: Please read the second paragraph.

11 A: "We will support our Mission by proactively engaging with our stakeholders to enhance  
12 our ability to act in a way that is consistent with society's expectations of a responsible  
13 company."

14 Q: What is the purpose of that statement?

15 A: I thought it was important that our Mission recognize that there are a range of  
16 stakeholders who have an interest in what happens at Philip Morris USA.

17 Q: Who are Philip Morris USA's stakeholders?

18 A: Stakeholders include all those with an interest in Philip Morris USA, including, but not  
19 limited to, consumers, employees, parents, government, the public health community, retailers,  
20 suppliers, the communities where we live and work, our shareholder Altria Group, Inc., and  
21 society in general.

22 Q: Beneath that paragraph it states that "We will be successful in achieving our goal  
23 when we" - do you see that?

1 A: Yes.

2 Q: Beneath that statement there are a number of other statements, that are listed in  
3 columns, correct?

4 A: Yes

5 Q: Could you please describe what these are?

6 A: These are the stakeholder goals that we have set for the company. Our belief is that we  
7 must meet these stakeholder goals to be successful in achieving our Mission.

8 Q: You said that these goals have changed slightly, is that correct?

9 A: Yes. I wrote the original goals, but they have been updated and evolved over time based  
10 on what we have learned as a company from talking with our stakeholders.

11 Q: I see that these goals are categorized in some fashion, is that correct?

12 A: Yes.

13 Q: What are these categories?

14 A: There are three overlapping strategies that support our Mission: "Align with Society,"  
15 "Exceed Consumer Expectations" and "Create Long-Term Value."

16 Q: Why do you group the stakeholder goals into these strategies?

17 A: These three core strategies describe the key areas of work for the organization to achieve  
18 the Mission. We develop initiatives each year in each of these strategic areas to make sure we  
19 are making progress in all of them and against all of our stakeholder goals. This is how we direct  
20 the work of the organization.

21 Q: Let's talk about your first strategy - "Align With Society" - what are you doing to  
22 align with society?

1 A: We have four stakeholder goals: (1) Help Reduce Youth Smoking; (2) Support  
2 Reasonable Regulation; (3) Comply with Legal and Regulatory Requirements; and (4) Reduce  
3 Environmental Impact.

4 Q: Let's talk about the first goal, "Help Reduce Youth Smoking - Identify, support and  
5 develop programs to discourage youth smoking while promoting positive youth  
6 development." What is Philip Morris USA trying to communicate with that goal?

7 A: We do not want kids to use our products and neither does society. So we need to do our  
8 part to address the youth smoking problem. If people think we are trying to sell our products to  
9 kids or society thinks we are trying to sell our products to kids, then they will take actions that  
10 will damage the long-term value of the company.

11 Q: Has Philip Morris USA done anything to make progress against its Mission  
12 regarding this goal?

13 A: Absolutely

14 Q: Mr. Szymanczyk, later in your testimony I will be getting into greater detail  
15 regarding your company's business practices. But for the purpose of providing some  
16 guidance regarding how Philip Morris USA is trying to achieve its Mission could you  
17 generally explain what your company has done to help reduce youth smoking?

18 A: I believe that we spend more money on youth smoking prevention than any other private  
19 entity. Over the past six years Philip Morris USA has spent more than \$657 million on youth  
20 smoking prevention efforts. In 1998 we formed a Youth Smoking Prevention department that is  
21 headed by a Senior Vice President who reports to me to identify support and develop programs  
22 to discourage youth smoking while promoting positive youth development. We took advice  
23 from experts in the youth smoking prevention and positive youth development fields and have

1 met with public health groups, including the American Legacy Foundation, to find ways to work  
2 together to prevent youth smoking. Over the past six years we have spent money funding  
3 television advertising, brochures and parent resources, school and community based programs,  
4 access prevention programs and research to help us better understand how to reduce youth  
5 smoking. We have also formed an advisory board of parenting and positive youth development  
6 experts concerned about youth smoking who have helped us develop the content of some of our  
7 recent efforts. In addition, Philip Morris USA has spent approximately \$500 million on  
8 responsible marketing initiatives. In total, Philip Morris USA has spent over \$1 billion on youth  
9 smoking prevention efforts.

10 Q: The next stakeholder goal states "Support Reasonable Regulation." What are you  
11 trying to convey here?

12 A: We believe that regulation is very important to setting standards that can be used as the  
13 basis for manufacturing potentially reduced harm products and communicating with adult  
14 smokers about those products.

15 Q: What has Philip Morris USA done in order to advance that goal?

16 A: For the last several years, Philip Morris USA has supported the passage of legislation that  
17 would give the FDA meaningful and effective authority to regulate tobacco products. We  
18 believe FDA regulation would provide consistency in tobacco policy, more predictability for the  
19 tobacco industry and an effective means of addressing issues that are of concern to our company,  
20 our consumers and society. So we have supported legislation that would confer that sort of  
21 authority, including legislation that was passed in the Senate last year. I have personally testified  
22 before three Congressional committees and submitted written statements to Congressional  
23 Committees in favor of FDA regulation

1 Q: The next stakeholder goal states, "Comply with Legal and Regulatory requirements  
2 that govern our products and our business," what is that referencing?

3 A: All companies need to comply with the regulations and laws that govern their business.  
4 It is important that those who work within those organizations know what they need to do to  
5 accomplish those goals.

6 Q: What have you done as an organization to advance this stakeholder goal?

7 A: I created a compliance department. That department is charged with ensuring that our  
8 organization meets or exceeds the legal and regulatory requirements that govern our products  
9 and business. In 2001, I appointed a senior vice president and chief compliance officer of Philip  
10 Morris USA. We have communicated clear expectations and clarified rules and desired business  
11 behaviors, developed compliance training, proactively identified potential compliance risks and  
12 conducted auditing and monitoring to see where we are. One part of this group's function is  
13 MSA compliance monitoring, but it goes beyond that.

14 Q: We are going to discuss MSA compliance in greater detail later, but just generally  
15 how has Philip Morris USA communicated with its employees regarding MSA compliance?

16 A: We have communicated clear expectations, clarified rules and desired business behaviors,  
17 and completed compliance training for company functions such as MSA compliance.

18 Q: The next strategy states "Reduce Environmental Impact," why is that in the  
19 Mission?

20 A: Every company, regardless of its business, needs to remain cognizant of the environment  
21 and the effect that its business can have on it.

22 Q: What have you done to advance this stakeholder goal?

1 A: Philip Morris USA supports measures that regulate smoking in public places. If a  
2 business owner chooses to accommodate smoking, they should design separate rooms or areas  
3 for non-smokers and minimize smoke through high quality ventilation systems. We have also  
4 strengthened our relations with organizations such as *Keep America Beautiful* and *Ocean*  
5 *Conservancy*, to address the problem of cigarette litter. Philip Morris USA also works with  
6 government agencies and community organizations to address environmental issues and reduce  
7 waste from cigarette products. In addition, we have expended resources reducing air and waste  
8 water discharge.

9 Q: Now lets move to the next strategy - "Exceed Consumer Expectations" - why is this  
10 a core strategy?

11 A: We are a consumer packaged goods company that creates products to meet consumer  
12 demand. Our success as an organization depends on our ability to exceed the expectations of our  
13 consumers, in our case adult smokers.

14 Q: What are some of the things Philip Morris USA has done to execute this core  
15 strategy?

16 A: First we use various methodologies to listen to what adult smokers have to say about our  
17 products and our competitors' products. We listen to what they like about our products and what  
18 they would like us to do to improve them.

19 Q: The first stakeholder goal under this strategy states "Provide Smoking  
20 Pleasure/Reduced Harm." Why is this a stakeholder goal?

21 A: Philip Morris USA sells a product that is harmful to people's health. Although we  
22 believe that the public is well-informed of those dangers, it is important that we do everything

1 we can to develop methods and technologies that will reduce harm to smokers, while still giving  
2 consumers what they want from our products.

3 Q: What has Philip Morris USA done in this area?

4 A: We have made, and continue to make, considerable investments to develop, scientifically  
5 evaluate, commercialize and launch products with technologies that potentially reduce a smoker's  
6 exposure to harmful compounds in cigarette smoke. We have also built a Quality System to  
7 provide consumers with the highest quality products we can make, and we periodically provide  
8 the consumer with new conventional product offerings to meet their preferences.

9 Q: Let's go to the next stakeholder goal -- "Communicate the Health Effects of Our  
10 Products" -- why is this a stakeholder goal?

11 A: Adult smokers and the general public expect us to communicate openly and honestly  
12 about our products.

13 Q: What has Philip Morris USA done to advance this goal?

14 A: We communicate responsibly, openly and honestly in a number of ways, including  
15 through our website, which was launched in 1999. We also began to tell people about the  
16 availability of our website, through package onserts, free-standing inserts that were distributed in  
17 newspapers, direct marketing to adults on our Adult Smoker Database and brochures at retail.  
18 We continue to run corporate responsibility television commercials that encourage people to visit  
19 our website where they can find more information on important tobacco issues and find links to  
20 information provided by the public health community on issues such as the health effects of  
21 smoking, low-tar cigarettes, pregnancy and smoking and youth access prevention.

22 Q: The next stakeholder goal states, "Provide Cessation Information," what is this  
23 referencing?

1 A: This references Philip Morris USA's efforts to provide smokers who have decided to quit  
2 with information that can help them do so.

3 Q: Howard Willard will testify in detail about what Philip Morris USA is currently  
4 doing in this area, but for now please generally explain what Philip Morris USA has done.

5 A: When we first looked at this issue there was a wealth of expert quitting information  
6 available from a variety of sources, including the public health community. We were not sure  
7 what our initial role should be or what value we could add. Initially, we provided links on our  
8 website to government and public health resources. We also added access to information about  
9 telephone quitlines that are available. In 2003, we included a brochure on quitting smoking  
10 resources in web kits that are offered to consumers who contact us. In mid-2003, we began  
11 airing the first of a series of television ads that highlight the quitting smoking section of the  
12 website and the links to government resources on quitting. In recent months, we have expanded  
13 our focus on how we can help provide information to consumers who have decided to quit.

14 Q: How have you expanded your focus?

15 A: Last June, we provided a grant to Duke University to help fund the establishment of a  
16 center focused on nicotine and smoking cessation research. In September we launched  
17 QuitAssist™, which is a new more comprehensive resource to help connect adult smokers who  
18 have decided to quit to public health resources that will help them. We also recently began  
19 airing television commercials to inform smokers about QuitAssist™.

20 Q: Why are you providing information that will help smokers quit smoking?

21 A: We continue to believe that adults understand the health risks of smoking and should  
22 make their own decisions about smoking. However, we have concluded that for a consumer who



1 smokes and decides to quit, exceeding consumer expectations includes providing information  
2 that might help them be more successful.

3 Q: The next stakeholder goal states "Market Our Products Responsibly," what is this  
4 referencing?

5 A: It is important to reinforce the fact that we only market cigarette brands to adults and that  
6 we minimize the amount of mass marketing that is seen by people who are under the legal age to  
7 buy cigarettes. We have also worked to create new, contained approaches to market to legal age  
8 adults who wish to be marketed to. Since the date of the MSA, we have significantly changed  
9 our marketing practices to minimize mass marketing activity in favor of these more contained  
10 approaches.

11 Q: Turning to the last strategy, "Create Long-Term Value," what is this intended to  
12 accomplish?

13 A: These goals are all designed to create long-term value in the company. By engaging our  
14 business partners, valuing our employees, providing shareholder return and actively playing a  
15 role in community development, we believe we can create the type of work environment that  
16 provides long-term economic and social value for our shareholder, a quality place to work for  
17 our employees and can serve a helpful role in communities in which we live and work.

18 Q: What are you doing to create value for your employees?

19 A: Through an in-house course called our Executive Leadership Forum we have provided  
20 our top executives with the opportunity to explore their leadership responsibilities and how they  
21 relate to the Mission and Values. We originally launched this program in 2000 and it has  
22 provided 286 of our top executives with the opportunity to explore their leadership  
23 responsibilities in a conversation led by me, along with the rest of the Senior Team. These

1 principles have been applied in similar sessions that have taken place in departments throughout  
2 the organization, exposing virtually all managers to this approach to leadership. We have  
3 quarterly programs for new employees called Discovery Days, through which they learn about  
4 the Mission and Values. As of 2004, we have brought the total number of employees who have  
5 attended to 3,300, more than 25 percent of our workforce. We have a new manager development  
6 program led by graduates of our executive leadership program called "Leadership Journey for  
7 New Managers." This program also focuses on our Mission and Core Values. It was executed  
8 six times in 2004, bringing our total number of new managers attending to over 330 since its  
9 inception in 2002. Equally important, over 60 directors and vice presidents have served as  
10 faculty, which continues to build their capability. We also launched a Sales Leadership Forum  
11 for unit managers, senior account managers and section operation managers. The core of this  
12 program focuses on developing customer partnerships and providing front line managers with an  
13 opportunity to explore and internalize their role and how it relates to our Mission and Values.  
14 By the end of 2004, over 615 managers benefited from this experience. We also have functional  
15 training programs that support our Mission and Values. An example would be our "Creating the  
16 Future" program in manufacturing which reached over 5000 hourly employees and allowed them  
17 to explore and understand our Mission and Core Values.

18 Q: What has Philip Morris USA done to create long-term value with its suppliers?

19 A: We have taken measures to strengthen and diversify our supplier base. We have  
20 established quality guidelines that our suppliers must adhere to and have designed a Supplier  
21 Recognition Program to reward those who reach the highest standard of performance. Supplier  
22 diversity is also supported by the highest levels of management and the company has won  
23 numerous awards like *Diversity, Inc.*'s recognition for "Top Ten Companies for Supplier

Diversity" in 2004 and the Virginia Minority Supplier Development Council's "Corporation of the Year" award in 2003, among others.

Q: What has Philip Morris USA done to create long-term value with its retailers?

A: Through our Retail Leaders program we incent retailers to operate with good cigarette category management principles including non-self-service merchandising, category and signage consolidation, clerk training, display of youth smoking prevention signage and materials, allocating inventory space consistent with sales, offering promotions and maintaining practices consistent with the MSA. Our objective is to help retailers to build their market share and ours responsibly.

Q: What has Philip Morris USA done to advance its community involvement?

A: The company has a long history of community involvement. We are involved in education, economic development and positive youth development nationwide. The company contributes money and allows our employees to volunteer for community programs on company time. We also sponsor an Employee Community Fund that donated more than \$3 million to the Richmond and Cabarrus areas in 2004.

Q: How do you create long term value for your shareholder Altria Group, Inc.?

A: If we do everything I have explained today, we will create long-term value for Altria. If we are exceeding consumer expectations by providing consumers with products that meet their taste expectations and potentially reduce harm, we will build more market share. If we have an operating environment that attracts the best people, we will make faster progress toward our Mission. If we are aligned with society and are operating in a way they view as responsible, then they will allow us to have a license to operate. All of these things taken together will enhance the financial performance of the company, which will provide value to Altria.

1 Q: What would happen if you did not engage in the business practices you have  
2 outlined?

3 A: If we did not do our part to address youth smoking, responsibly communicate with the  
4 public or continue to develop reduced risk products, for example, I believe our company would  
5 be unable to provide long-term value to our shareholder. If society perceives our company as not  
6 caring about these issues, then there are stakeholders who will take aggressive action and we will  
7 be unable to survive in the marketplace over the long term. Consequently, these stakeholder  
8 goals are not only an important part of developing a responsible corporate culture, they are  
9 essential to our surviving in the marketplace.

10 Q: I now want to turn to what you described as Core Values, I believe you testified that  
11 the Mission represents what the company needs to do and the Values represent how people  
12 need to go about doing their work, correct?

13 A: Yes.

14 Q: Let me show you JDEM-040313. Are those Philip Morris USA's Core Values?

15 A: Yes.



## Our values

At the heart of our business is a commitment to integrity, trust and respect, both as individuals and as a company. We conduct ourselves within both the spirit and the letter of the law, regulations, agreements and policies that govern us. We are honest with one another and with our customers and suppliers.

We are committed to providing a safe and healthy work environment for all our employees. We are committed to the highest standards of quality and safety in everything we do. We are committed to the highest standards of ethical behavior in everything we do. We are committed to the highest standards of environmental stewardship in everything we do.

Our commitment to the environment is a key part of our business. We are committed to the highest standards of environmental stewardship in everything we do. We are committed to the highest standards of ethical behavior in everything we do. We are committed to the highest standards of quality and safety in everything we do.

We are committed to the highest standards of ethical behavior in everything we do. We are committed to the highest standards of quality and safety in everything we do. We are committed to the highest standards of environmental stewardship in everything we do. We are committed to the highest standards of ethical behavior in everything we do.

We are committed to the highest standards of ethical behavior in everything we do. We are committed to the highest standards of quality and safety in everything we do. We are committed to the highest standards of environmental stewardship in everything we do. We are committed to the highest standards of ethical behavior in everything we do.



JD-CES041

JDPM-040313

- 1
- 2 Q: Who developed the statement of Core Values?
- 3 A: My Senior Team and I did. We dedicated several sessions to identifying the principles
- 4 we wanted to guide the behavior of our employees in carrying out the Mission.
- 5 Q: How many Core Values are there?
- 6 A: Five.
- 7 Q: Can you read the first Core Value please?
- 8 A: "We believe in operating with integrity, trust and respect, both as individuals and as a
- 9 company. We conduct ourselves within both the spirit and the letter of the law, regulations,
- 10 agreements and policies that govern us. We are honest with one another and with our

1 stakeholders, fully disclosing all appropriate information, and not just that which supports our  
2 point of view. We have the courage to do what's right."

3 Q: Why did you make that the first Core Value?

4 A: We had been accused of operating without integrity and in an untrustworthy manner. We  
5 have to do everything possible to make sure that does not happen again as we operate our  
6 business going forward. Our business success is dependent upon people feeling comfortable that  
7 we are operating with integrity. Our ability to achieve our Mission is dependent on whether  
8 people view us as trustworthy.

9 Q: Looking at the second Core Value -- "We demonstrate a passion to succeed in every  
10 aspect of our business" -- why is that one of Philip Morris USA's Core Values?

11 A: We will make the fastest progress if we have people who are committed to and energized  
12 about the work they do. We need people who believe in our Mission and have the passion to  
13 remain committed to it.

14 Q: This Core Value states that you are looking to "continually raise our expectations  
15 for what is possible and encourage a constructive dissatisfaction with our results." What  
16 does that mean?

17 A: We want our employees to think continually about how they can do their jobs in a way  
18 that advances our goal of being the most responsible tobacco company. However, a part of being  
19 responsible is respecting the views of your employees and encouraging them to constructively  
20 disagree. I want people who are willing to constructively ask whether what we are doing is in  
21 fact advancing our Mission.

1 Q: Looking at the third Core Value - "We believe in executing with quality, by  
2 understanding and responding to our adult consumers' preferences" - what is that  
3 referencing?

4 A: Our goal is to deliver the highest quality result to our consumers and other stakeholders.  
5 We do that by executing quality principles that include saying what we will do in advance, doing  
6 what we say and documenting the result.

7 Q: Let's take a look at the fourth Core Value. Can you read that, sir?

8 A: "We believe in driving creativity into everything we do, resulting in innovation and  
9 continuous improvement for our adult consumers and our business processes. We encourage  
10 everyone to think about things differently and to think about different things, bringing vigorous  
11 challenge to everything we do. We build and develop ideas through collaborative leadership and  
12 by fully utilizing the unique talents within our company. We are receptive to new ideas, and  
13 applaud those who dare to think differently."

14 Q: Why do you think that is important as CEO?

15 A: We have significant challenges that require creative solutions. Trying to create a reduced  
16 harm product requires creative solutions. Doing our part to prevent underage smoking requires  
17 creative solutions. Marketing to adults who smoke requires creative solutions.

18 Q: Could you read the last Core Value?

19 A: "We believe in sharing with others, unleashing the tremendous resources of our people as  
20 a force for good into the communities in which we live and work. We foster an environment  
21 where our people can contribute their time, energy and commitment to their families, their  
22 neighbors, their colleagues and their communities. We share ideas, opinions and expertise  
23 openly and unselfishly both within the Company as well as with those with whom we interact in

1 our business dealings, in the true spirit of collaboration. We promote personal and professional  
2 pride and growth. As a company, we acknowledge and embrace our role as a responsible,  
3 involved citizen and community leader."

4 Q: Why is this a Core Value?

5 A: This core value speaks both to our desire to have collaborative solutions that come from  
6 people openly and honestly sharing their ideas and it also speaks to our company's commitment  
7 to the communities in which we live and work.

8 Q: Mr. Szymanczyk, how long have the Mission Statement and Core Values been in  
9 place at Philip Morris USA?

10 A: Since 1998.

11 Q: Is it important to you that the content and meaning of the Core Values and Mission  
12 Statement are communicated to the 11,500 employees of Philip Morris USA?

13 A: Absolutely. They mean nothing if they are just words on a card. They have to be  
14 communicated and acted upon.

15 Q: Back in 1998, did you personally take steps to get the message out?

16 A: Yes.

17 Q: What did you do?

18 A: In June of 1998, I personally went out and presented the Core Values and Mission  
19 Statement to our employees.

20 Q: Where did those meetings take place?

21 A: At each of our factory locations, each of our sales regions and at our headquarters in New  
22 York. I presented the Mission Statement and Core Values, and I answered questions regarding  
23 the Core Values and Mission Statement.



1 Q: How many meetings did you attend to explain the Mission and Core Values when it  
2 was first launched?

3 A: Nine.

4 Q: Where did you hold these meetings?

5 A: At the time we had three factory locations, so I went to all three of those. We also had  
6 meetings at our New York headquarters. The other five meetings were held at locations where  
7 we brought together the people in each of our five sales regions.

8 Q: How did you communicate the message in these meetings?

9 A: I presented our Mission and Values, discussed with the respective groups why I felt they  
10 were important and held a question-and-answer session so people could understand why this was  
11 important and have any questions answered.

12 Q: Was there a way for employees who could not attend the meetings to hear your  
13 presentation?

14 A: The presentation was videotaped so employees who were unable to attend could view it  
15 at a later time. For example, we run three shifts in our factories, so some people may have had to  
16 watch the meeting on videotape in order to participate.

17 Q: After you personally had these meetings did you make any other efforts to get the  
18 message out?

19 A: Each of our Senior Vice Presidents held meetings in their organizations during the Fall of  
20 1998. We have also taken other steps over time to get the message out over the last several  
21 years.

22 Q: What are some of those steps?

1 A: I conduct a monthly breakfast meeting with employees that I bring into the company  
2 from around the organization to discuss our progress against our Mission. We also stress the  
3 importance of the Mission and Values in my State of the Business addresses that take place every  
4 six months. The Mission and Values are also built into our employee performance evaluation  
5 process. Employees are annually evaluated on their contributions to our Mission and their  
6 behavior toward our five values in determining their compensation and employee rating. We  
7 have also used other methods such as video conferences and training programs as a means of  
8 focusing our employees on our Mission and Values.

9 Q: And I believe you testified earlier that Philip Morris USA orients new employees on  
10 the Core Values and Mission Statement, correct?

11 A: Yes.

12 Q: What do you do?

13 A: We have an orientation program for all new employees that they are required to go to  
14 where they learn about the company's Mission and Values in greater detail.

15 Q: You mentioned that you communicate to your employees at State of the Business  
16 addresses, is that correct?

17 A: Yes.

18 Q: Showing you JD-050270, JD-050275, and JD-051483 do you recognize these  
19 documents?

20 A: Yes. These are examples of my "State of the Business" presentations.

21 Q: How are these presentations prepared?

22 A: I prepare them with assistance from the business planning department.

23 Q: Are these presentations prepared in the ordinary course of business?

1 A: Yes

2 Q: What is a State of the Business presentation?

3 A: It is a presentation discussing how we are doing against the goals we have set for  
4 ourselves as a company and our progress against our Mission.

5 Q: Who at Philip Morris USA attends these presentations?

6 A: A broad selection of employees from our hourly and salary ranks are invited to these  
7 presentations and they are broadcast over the internal television channel. Most employees,  
8 including hourly workers, have a chance to see the State of the Business presentation once per  
9 year.

10 Q: Is the Mission reinforced in each of these presentations?

11 A: Yes.

12 Q: Showing you JD-050275, what is this document?

13 A: It was a presentation that David Beran and I prepared on the state of the business in 2003.

14 Q: Could you please turn to the page with bates number 30000554458. Do you see that  
15 list?

16 A: Yes, I do.

17 Q: Please state the fourth point on the list.

18 A: "Progress Against Core Strategies."

19 Q: Now reviewing the next ten pages, what are you discussing in this presentation?

20 A: We are essentially discussing Philip Morris USA's progress against the Mission  
21 Statement. It was certainly a large focus of this presentation.

22 Q: Why was it a focus of your presentation?

23 A: The Mission and Core Values are a focus of everything we do at Philip Morris USA.

1 Q: But this presentation was given in 2003, five years after the Mission Statement and  
2 Core Values were first drafted. Your employees have surely gotten the message have not  
3 they?

4 A: I certainly hope so, but that does not mean that we should stop focusing on it. The  
5 Mission and Core Values were not intended to give people something to think about in 1998.  
6 They were intended to define our direction and expected behaviors going forward into the future.  
7 They represent the core work we do.

8 Q: Showing you JD-055035 and JD-055036, do you recognize these documents?

9 A: Yes. This is a copy of my speech and presentation slides for my most recent State of the  
10 Business presentations.

11 Q: Do these speeches discuss your progress against your Mission and Values?

12 A: Yes, extensively.

13 Q: Do you believe that you could have given any of these speeches to your employees if  
14 your speech did not characterize what was actually being done at Philip Morris USA?

15 A: No.

16 Q: Are you aware that the Department of Justice has alleged that Philip Morris USA  
17 has engaged in significant wrongful conduct including making misrepresentations,  
18 concealing material information and marketing to youth?

19 A: Yes.

20 Q: Do you believe that it would be possible for your company to engage in such conduct  
21 under Philip Morris USA's current corporate culture?

22 A: No.

23 Q: Why?

1 A: All of the employees at Philip Morris USA have been focused on and evaluated on our  
2 progress toward the Mission and Values for the last seven years. We have also had a significant  
3 change in our management and employee base over the past several years. That significant  
4 change in the management and employee base has had a profound impact on the culture of the  
5 company. It is no exaggeration to say that the culture of this company has been completely  
6 transformed over the past eight years. If I left tomorrow it would be extraordinarily difficult for  
7 this company to go in a different direction. I do not believe that our employees or other  
8 stakeholders would allow it.

9 Q: Have you prepared a chart that helps provide some clarification regarding the  
10 changes in your senior management?

11 A: Yes.

12 Q: Let me show you JDEM-040284. Please explain what this chart is.

13 A: This is a chart reflecting the Philip Morris USA Senior Team and their current positions.

## Philip Morris USA Senior Leadership Team

Name	Current Position	Year Appointed to Current Position
Mike Szymanczyk	CEO	1997
John Nelson	President Operations and Technology	2002
David Beran	Exec. VP Strategy, Communications and Consumer Contact	2002
Craig Johnson	Exec. VP Sales and Distribution	2002
Denise Keane	Senior VP General Counsel	2001
Howard Willard	Senior VP Youth Smoking Prevention and Corp Responsibility	2002
Nancy Brennan Lund	Senior VP Marketing	1999
Gregory Cummings	Senior VP Manufacturing and Quality	2002
Kevin Bannar	Senior VP Human Resources	2003
Tina Walls	Senior VP External Affairs	2003
Michael Farriss	Senior VP Communications & Gov Affairs Coordination	2004
Virginia Murphy	Senior VP Compliance and Brand Integrity	2005
Richard Solana	Senior VP Research and Technology	2005
Harry Glade	Senior VP Finance	1998

JDEM-040284

Q: How many current members of the Senior Team does the chart show that you have appointed to their positions since you have been CEO?

A: The chart shows that I have selected and appointed 12 of the 13 members of the Senior Team to their current positions.

Q: Which one did not you appoint?

A: The Senior Vice President of Finance.

Q: What are the titles of the people you did appoint?

A: I appointed the people who hold all of the following positions: President Operations & Technology; Executive Vice President, Strategy, Communications and Consumer Contact; Executive Vice President, Sales and Distribution; Senior Vice President, Marketing; Senior Vice

1 President and General Counsel; Senior Vice President, Human Resources; Senior Vice President,  
2 Manufacturing & Quality; Senior Vice President, Communications & Government Affairs  
3 Coordination; Senior Vice President, Compliance and Brand Integrity; Senior Vice President,  
4 Research and Technology; Senior Vice President, External Affairs; Senior Vice President, Youth  
5 Smoking Prevention and Corporate Responsibility.

6 Q: If you include all executives at the level of vice president or above, including those  
7 who are members of the Senior Team, how many of those did you select since you became  
8 CEO to hold their current positions?

9 A: Since I became CEO, I selected 38 out of 40 to be in their current positions. As I just  
10 testified, I have appointed 12 of 13 Senior or Executive Vice Presidents. In addition, I have  
11 appointed 26 of 27 Vice Presidents.

12 Q: As an example, are there certain key departments within Philip Morris USA in  
13 which you have appointed the entire key leadership of the department?

14 A: Yes, I have appointed all of the senior leadership in many key departments, such as:  
15 Marketing, Research & Development, Manufacturing, Corporate Affairs, Compliance and Youth  
16 Smoking Prevention.

17 Q: Why is this important?

18 A: Because it demonstrates that I have personally selected the leadership in the company  
19 that I felt had the capability and passion to carry out our Mission within the context of our Core  
20 Values.

21 Q: Could you please tell the Court approximately what percent of Philip Morris USA's  
22 salaried employees have started working at the company since you joined the company in  
23 1990?

1 A: Approximately 50 percent.

2 Q: Why is this important?

3 A: It demonstrates that we have a critical mass of employees who have spent most of their  
4 careers with the company focused on our Mission and operating with our Core Values.

5 Q: In addition, would you please estimate the percent of Philip Morris USA's salaried  
6 employees who started with the company since 1998 when you implemented the Mission  
7 and Core Values?

8 A: Approximately one-third.

9 Q: Why is this important?

10 A: Because it demonstrates that a large percentage of our salaried employees have not  
11 experienced anything but this Mission and these Core Values during the course of their career in  
12 the company. They were actually recruited and signed on to pursue this Mission in an  
13 environment described by our five Core Values.

14 Q: You mentioned the Mission is connected to your employee performance evaluation  
15 process, could you explain what you did?

16 A: We redesigned our performance review process, called the Performance Partnership  
17 Process, so that as employees are evaluated, 50 percent of their review is based on what they  
18 contributed to the company's Mission in their role and 50 percent is based on how they got it  
19 done. The "how" looks at how well they have lived up to the Core Values.

20 Q: Does this employee evaluation process include your top executives?

21 A: Yes it does.

22 Q: Does it even apply to members of the Senior Team?

23 A: Absolutely. In fact, it applies with particular force to them.



1 Q: What do you mean it applies with particular force to them?

2 A: Like all employees, the evaluation of executives is based upon their progress against the  
3 Mission and their adherence to the Values in pursuit of the Mission. Executives at the level of  
4 vice president and higher, however, are held to a higher standard than other employees. I expect  
5 them to be role models for other employees and I personally let them know that I have this  
6 expectation. Executives are not only expected to excel in job performance, but also to excel in  
7 their adherence to the Values of Philip Morris USA. In fact, I personally meet with every  
8 employee when he or she is promoted to the vice president level in order to let him or her know  
9 that these are the expectations.

10 Q: When you introduced the Performance Partnership Process, did you communicate  
11 it to the employees of Philip Morris USA?

12 A: Yes.

13 Q: How?

14 A: I went out and spoke with the organization again. I held a meeting in New York, one at  
15 each of our factories and one large meeting to cover the sales force.

16 Q: Does Philip Morris USA's Performance Partnership Process affect employee  
17 compensation?

18 A: Yes. It is the basis for determining salary increases and promotions.

19 Q: Does the evaluation of Philip Morris USA's performance relative to its Mission  
20 affect employee compensation in any other way?

21 A: Yes.

22 Q: How?

1 A: Every year Altria determines our incentive compensation pool based on certain goals that  
2 are being met by the company.

3 Q: What is the incentive compensation pool?

4 A: It represents the amount of money that is allocated annually by the Board of Directors of  
5 Altria to be paid to the eligible employees in Philip Morris USA based on their performance.  
6 Eligible employees include entry-level managers up to top executives.

7 Q: How does Altria determine the incentive compensation pool?

8 A: I send a memo to the Altria Board of Directors describing Philip Morris USA's results  
9 versus its Mission goals and business measures for the past year. The Board rates the company's  
10 performance and their rating determines the amount of money available to distribute to  
11 employees based on a predetermined formula for each job .

12 Q: At the beginning of this examination you described your annual bonus. Is it  
13 determined in the same way that you just described?

14 A: Yes.

15 Q: In the memo that you send to the Board have you ever referenced the Mission and  
16 Values?

17 A: Yes.

18 Q: Does the memo reference Philip Morris USA's financial targets?

19 A: Yes.

20 Q: Has Philip Morris USA ever informed Altria that it failed to meet certain financial  
21 goals?

22 A: Yes. In fact, in 2002, we informed Altria that we failed to meet all of our financial goals.

23 Q: Did you inform Altria of anything else that year?

1 A: Yes, I informed them of all the progress we had made toward meeting our nonfinancial  
2 Mission goals.

3 Q: How much was your bonus for 2002?

4 A: One million dollars.

5 Q: Did you meet your financial targets in 2001?

6 A: Yes.

7 Q: How much was your bonus in 2001?

8 A: \$1.2 million.

9 Q: Just so I understand this clearly. You missed all your financial targets in 2002 and  
10 made all your financial targets in 2001 and the Altria Board still paid you 85 percent of the  
11 bonus amount they paid you in 2001.

12 A: Yes.

13 Q: Why did they pay you that much?

14 A: Because we continued to make significant progress toward our nonfinancial Mission  
15 goals like reducing underage smoking, developing potentially less hazardous products, and  
16 engaging with external stakeholders.

17 Q: In 2003 or 2004, did Philip Morris USA make as much money as it made in 2001 or  
18 2002?

19 A: No.

20 Q: What was your bonus for 2003?

21 A: \$1.5 million.

22 Q: What was your bonus for 2004?

23 A: \$1.8 million.

1 Q: Why did they pay you that much?

2 A: Because we continued to make significant progress toward our nonfinancial Mission  
3 goals like reducing underage smoking, developing potentially less hazardous products, and  
4 engaging with external stakeholders and we met lowered financial goals and were able to return  
5 to growing our market share.

6 Q: What message have you concluded from your bonus payments over the past few  
7 years?

8 A: That the Board of Altria expects me and the company to make progress against all of the  
9 stakeholder goals we have in our Mission, because they believe that's what is in the best interest  
10 of Altria shareholders.

11 Q: How would you characterize your company's progress against the Mission?

12 A: I believe we have made excellent progress, but there still is work to be done. Philip  
13 Morris USA, consistent with our Values, is always seeking to improve itself as a company.

14 Q: Does Philip Morris USA have any new initiatives planned?

15 A: We specifically identify initiatives to pursue each and every year.

16 Q: What are some of them?

17 A: Recognizing that the cigarette business is a declining business, we are actively looking to  
18 pursue other business opportunities outside the cigarette business. We have also developed a  
19 plan to significantly expand our Research & Development capability both as a part of preparing  
20 for new business in the future and as a part of improving our existing products. We will be  
21 introducing new cigarette technologies in 2005. We are also preparing a Mission goals report for  
22 our employees that will serve as a basis for moving forward in satisfying our Mission. We are  
23 also launching a national television campaign supporting QuitAssist™.

- 1 Q: Mr. Szymanczyk, you have been discussing a variety of business practices at Philip  
2 Morris USA that have been implemented as a result of the Mission and Values, is that  
3 accurate?
- 4 A: Yes.
- 5 Q: Have you prepared a chart that summarizes the major business practices at Philip  
6 Morris USA that have been driven by the Mission and Values during the past several  
7 years?
- 8 A: Yes.
- 9 Q: Showing you JDEM-040287, do you recognize this document?
- 10 A: Yes, this is the chart I have helped to prepare.



11

1 III. PHILIP MORRIS USA IS RESPONSIBLY COMMUNICATING WITH THE  
2 PUBLIC REGARDING TOBACCO ISSUES

3 Q: I want to direct your attention to the first bullet point on the chart of recent business  
4 practices chart -- "Responsible Communications With the Public Regarding Tobacco  
5 Issues." What are some of the ways that Philip Morris USA communicates with the public  
6 regarding tobacco issues?

7 A: Philip Morris USA communicates with the public in many different ways. One of our  
8 primary communication vehicles over the past few years has been our website. We also use  
9 television advertising, free-standing inserts, packaging, package onserts, and warning labels to  
10 communicate information found on our website as well as to direct people to the website for  
11 more information. We also communicate warnings in our advertisements, direct mail, and point  
12 of sale communications to smokers.

13 Q: Please direct your attention to JDEM-040177. What information is contained  
14 within this exhibit?

15 A: It is a chart that shows the various forms of communication Philip Morris USA has used  
16 since 1999 to communicate with the public about the Philip Morris USA website.

[illegible]

JOEM-040177

### A. INTERNET WEBSITE

**Q:** When did Philip Morris USA launch its website?

A: October 1999.

**Q:** Would you please explain why Philip Morris USA maintains a website?

A: We wanted to take advantage of what was a new method of communication at the time and believed that doing so was consistent with our Mission and Core Values. You can communicate a lot of information on the Internet and make it easily accessible. If someone visits our website they can access a great deal of information regarding Philip Morris USA and our products, as well as public health information regarding our products.

1 Q: Why did Philip Morris USA believe it was important to communicate information  
2 through a website?

3 A: At the time we decided to develop a website, there was a lot of media surrounding the  
4 state lawsuits. The media reports inaccurately portrayed that Philip Morris USA was hiding facts  
5 about cigarette smoking and accused the company of marketing its products to kids. We wanted  
6 to make available to the public accurate information we thought they would find useful regarding  
7 cigarette smoking and other information about our company.

8 Q: Is Philip Morris USA marketing its cigarette brands by the use of its website?

9 A: No, absolutely not. We do not sell or market our brands on our website.

10 Q: Does Philip Morris USA have what is known as a home page on its web site?

11 A: That's correct.

12 Q: What is a home page?

13 A: A home page is basically a table of contents or an index for the website. It also  
14 highlights new information or additions to our website.

15 Q: Showing you JD- 53199, are you familiar with this?

16 A: Yes, this is a CD containing a snapshot of our website on May 7, 2004.

17 Q: Is this a true and accurate copy of the Philip Morris USA website as of May 7, 2004?

18 A: Yes it is.

19 Q: Let me show you JDEM-040288, could you explain what we are looking at?

20 A: This is the homepage. It gives the reader an overview of all the information that is on our  
21 web site and makes it easy for people to figure out how to access that information via the website  
22 links.





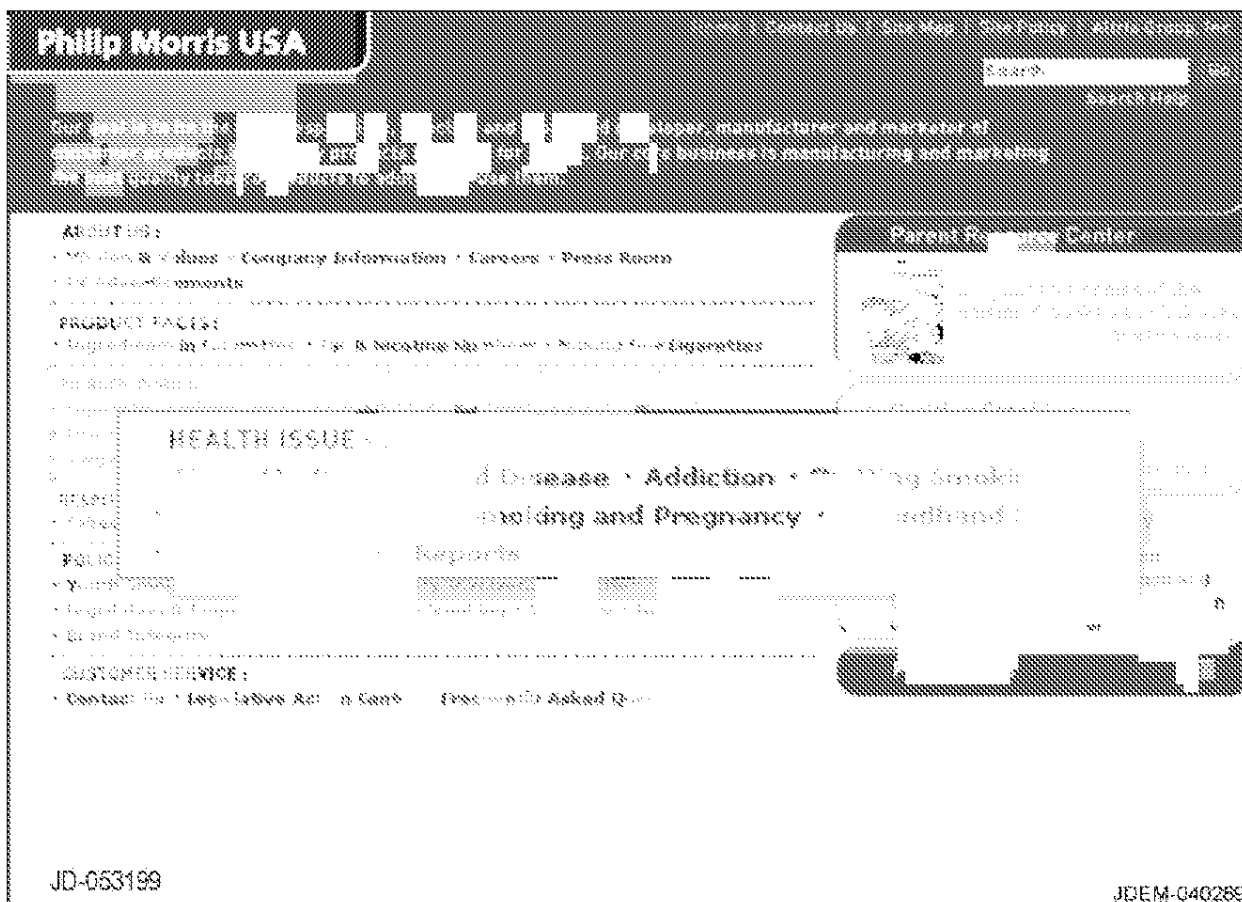
1

2 Q: What are links?

3 A: If you click on a link, it will take you to a different website page or to a different website  
4 altogether.

5 Q: Let me show you a callout of the homepage regarding "Health Issues," can you  
6 explain what we are looking at?

7 A: This lists the important smoking and health issues about which Philip Morris USA  
8 provides information on its website.



2 Q: What happens if I click on the link that states "Cigarette Smoking and Disease in  
3 Smokers?"

4 A: You will be directed to a page that discusses public health information on smoking and  
5 disease.

6 Q: Showing you a callout of a page entitled "Cigarette Smoking and Disease in  
7 Smokers," JDEM-040291, what is this page?

8     A:     This is the page I just referenced.

[illegible]

Q: Could you please read the first two sentences underneath the title?

A: "Philip Morris USA (PM USA) agrees with the overwhelming medical and scientific consensus that cigarette smoking causes lung cancer, heart disease, emphysema and other serious diseases in smokers. Smokers are far more likely to develop serious diseases, like lung cancer, than non-smokers."

**Q:** Why did Philip Morris USA choose to put that statement on its website?

A: We believe that providing this information is consistent with our Mission and Core Values. One of our stakeholder goals is to communicate openly, honestly and effectively regarding the health effects of our products. We believe that communicating public health information on our website supports one of our Mission goals.

1 Q: Mr. Szymanczyk, before we proceed further with the website, let me ask you: At  
2 any time since you have been employed at Philip Morris USA has the company ever stated  
3 publicly that cigarette smoking is not associated with disease?

4 A: No, we have not, to the best of my knowledge. We have, however, used different  
5 language to express this than the public health community has. Until I testified in the *Engle* case  
6 in 2000, Philip Morris USA said that smoking was a risk factor for disease. I am not aware of  
7 any statement made by anyone on behalf of Philip Morris USA -- since I started working at the  
8 company -- denying an association between cigarette smoking and disease.

9 Q: Let's turn back to the exhibit we were just discussing. What does the next sentence  
10 say?

11 A: "There is no safe cigarette."

12 Q: Why did Philip Morris USA choose to put that statement on its website?

13 A: This is another important public health community message and its communication is  
14 important to meeting our Mission goals.

15 Q: What does the second paragraph state? This is marked as JDEM-040291.

16 A: "These are and have been the messages of the U.S. Surgeon General and public health  
17 authorities worldwide. Smokers and potential smokers should rely on these messages in making  
18 all smoking-related decisions."



Q: Why does Philip Morris USA tell the reader that they should rely on messages from public health authorities in making all smoking-related decisions?

A: Because Philip Morris USA believes that is what people should do. They should rely on the public health authorities on issues related to smoking and health.

Q: Does Philip Morris USA agree that smoking cigarettes causes lung cancer and other serious diseases?

A: Yes. We have stated that on our website and in many forms of communication about our website.

Q: What scientific evidence does Philip Morris USA rely on to reach that conclusion?

1 A: The same data that the Surgeon General relies on – including very strong statistical data  
2 that connects cigarette smoking to lung cancer and other serious diseases.

3 Q: Having said this, are there still certain issues related to causation that remain  
4 unanswered?

5 A: Yes, there are.

6 Q: What are these issues?

7 A: While the epidemiological evidence demonstrates that smoking causes lung cancer and  
8 other diseases, scientists do not know the mechanism by which cigarette smoke or constituents in  
9 cigarette smoke cause disease. This would be important to know because if we knew the  
10 mechanism that caused certain diseases in smokers, it might allow us to understand how to  
11 reduce the harm caused by smoking through improved cigarette design.

12 Q: Did you personally believe cigarette smoking causes lung cancer and other serious  
13 diseases before you began working at Philip Morris USA?

14 A: I knew smoking was bad for your health. I cannot speak to specific diseases, but as a  
15 teenager I always knew smoking was bad for you.

16 Q: Why does Philip Morris USA discuss the strong medical and scientific consensus on  
17 its website, as opposed to stating that the mechanism by which disease is caused by  
18 cigarette smoke, or constituents in cigarette smoke, remains unknown today?

19 A: Because providing this information is consistent with our Mission and Values. In  
20 October of 1997 the company committed to members of Congress that there would be one voice  
21 -- the public health community -- which would communicate with the public regarding smoking  
22 and health. Because the Philip Morris USA website is a public communication, our statements  
23 on the website must be consistent with that commitment made to Congress. In addition,

providing this information on the website is also consistent with the message our consumers receive from our brands.

Q: Showing you a copy of JD-040499, do you recognize this document?

A: Yes, it is a copy of the 1997 Statement of Position. This is also commonly known as the Hatch Statement. It was through that statement that we made our commitment to Congress.

Q: Let me go back to the "Cigarette Smoking and Disease in Smokers" page. JDEM-040290. Could you please explain the section which begins "[t]he following Surgeon General's Reports are of particular significance. . . .?"

A: This section provides links to certain Surgeon General's Reports.

Philip Morris USA

Home | Contact Us | Privacy Policy | Accessibility | 1-800-448-2000

JD-053199

About Us  
Product Portfolio  
Health Issues  
Responsible Marketing  
Fiduciary, Practices & Positions  
Customer Service

General's decisions and decisions on decisions

The following links provide information on the company's commitment to responsible marketing and its stance on health issues. The company's commitment to responsible marketing is a key part of its business strategy. The company's stance on health issues is a key part of its business strategy.

JD-053199

JDEM-040290

Q: Are there any other links on this page?

1 A: There are also links to the International Agency for Research on Cancer, the World  
2 Health Organization, U.S. Centers for Disease Control and the American Cancer Society. Those  
3 links are provided on the right hand side of this page.

4 Q: Do all of these organizations advise the public about the serious health effects of  
5 smoking?

6 A: That's correct.

7 Q: Do any of the public health authorities identified on the page entitled "Cigarette  
8 Smoking and Disease in Smokers" in any way suggest that smoking does not harm you?

9 A: I do not believe so.

10 Q: Still looking at JDEM-040290, could you read the last paragraph?

11 A: "PM USA supports a single, consistent public health message on the role played by  
12 cigarette smoking in the development of disease in smokers, as well as smoking and addiction.  
13 This includes our support of the law that requires cigarette manufacturers to place health  
14 warnings on packages and in advertisements and our belief that the government and public health  
15 officials should determine the content of warning messages."





A: You will be directed to a section of the Philip Morris USA web site that provides information on addiction.

Q: I am now showing you the page on addiction, JDEM-040303. Could you please read what is stated beneath the title "Addiction?"

A: "Philip Morris USA agrees with the overwhelming medical and scientific consensus that cigarette smoking is addictive. It can be very difficult to quit smoking, but this should not deter smokers who want to quit from trying to do so."



Q: Why did Philip Morris USA put these statements on its web site?

1 A: Because providing this information is consistent with our Mission and Core Values.  
2 Philip Morris USA wants the public to be aware of what the public health community is saying  
3 on this issue.

4 Q: Before we proceed further with the website, let me ask you: At any time since you  
5 have been employed at Philip Morris USA has the company ever stated publicly that  
6 quitting cigarette smoking is not difficult?

7 A: No, to the best of my knowledge, we have not. In the past, however, Philip Morris has  
8 used the word "addiction" in a different way than the public health community has. Until the  
9 launch of the Philip Morris USA website in October, 1999, Philip Morris USA had used what I  
10 understand to be a traditional definition of addiction requiring intoxication, withdrawal and  
11 tolerance -- and on that basis had denied that cigarette smoking was addictive. I am not aware of  
12 any statement made by anyone on behalf of Philip Morris USA denying that it could be difficult  
13 to quit smoking.

14 Q: This webpage states "learn more about quitting smoking" immediately after the  
15 statement you just read. If you click on that statement what comes up?

16 A: You will access the "quitting smoking" page of our web site, which is also accessible  
17 from the page on health issues.

18 Q: Showing you a callout of a page entitled "Quitting Smoking" -- JDEM-040307 --  
19 What is this page?

20 A: This is the page you would be directed to if you linked to this section on May 7, 2004.



Q: Why is Philip Morris USA providing people with information regarding how to quit smoking?

A: Because most people at some point decide to quit smoking. When they make that decision we want them to be able to access information that will help them.

Q: Why do you say that most people at some point decide to quit smoking?

A: Because of those people alive today who have ever smoked, approximately 50 percent have quit smoking.

Q: What is Philip Morris USA trying to get across to the reader in the first paragraph of this section of the website?

1 A: We are trying to get across the Surgeon General's message regarding quitting smoking.  
2 And we're telling people that the best thing they can do for their health, is to quit smoking.

3 Q: The Philip Morris USA website states: "To reduce the health risks of smoking, the  
4 best thing to do is to quit. Public health authorities do not endorse either smoking fewer  
5 cigarettes or switching to lower-yield brands as a satisfactory way of reducing risk." Does  
6 Philip Morris USA agree with that statement?

7 A: Yes. We agree with that.

8 Q: Looking at the second paragraph of the quitting smoking page, the second  
9 paragraph states: "It can be difficult to quit smoking, and many smokers who try to quit  
10 do not succeed. Millions of smokers in the United States and around the world have  
11 succeeded." Why does Philip Morris USA make that statement on its web site?

12 A: Because providing this information is consistent with our Mission and Core Values.  
13 Even though smoking is addictive for many people, millions have quit. We believe that for  
14 smokers who want to quit, it is important to know that they can.

15 Q: Does this "Quitting Smoking" page reflect what the website looks like today?

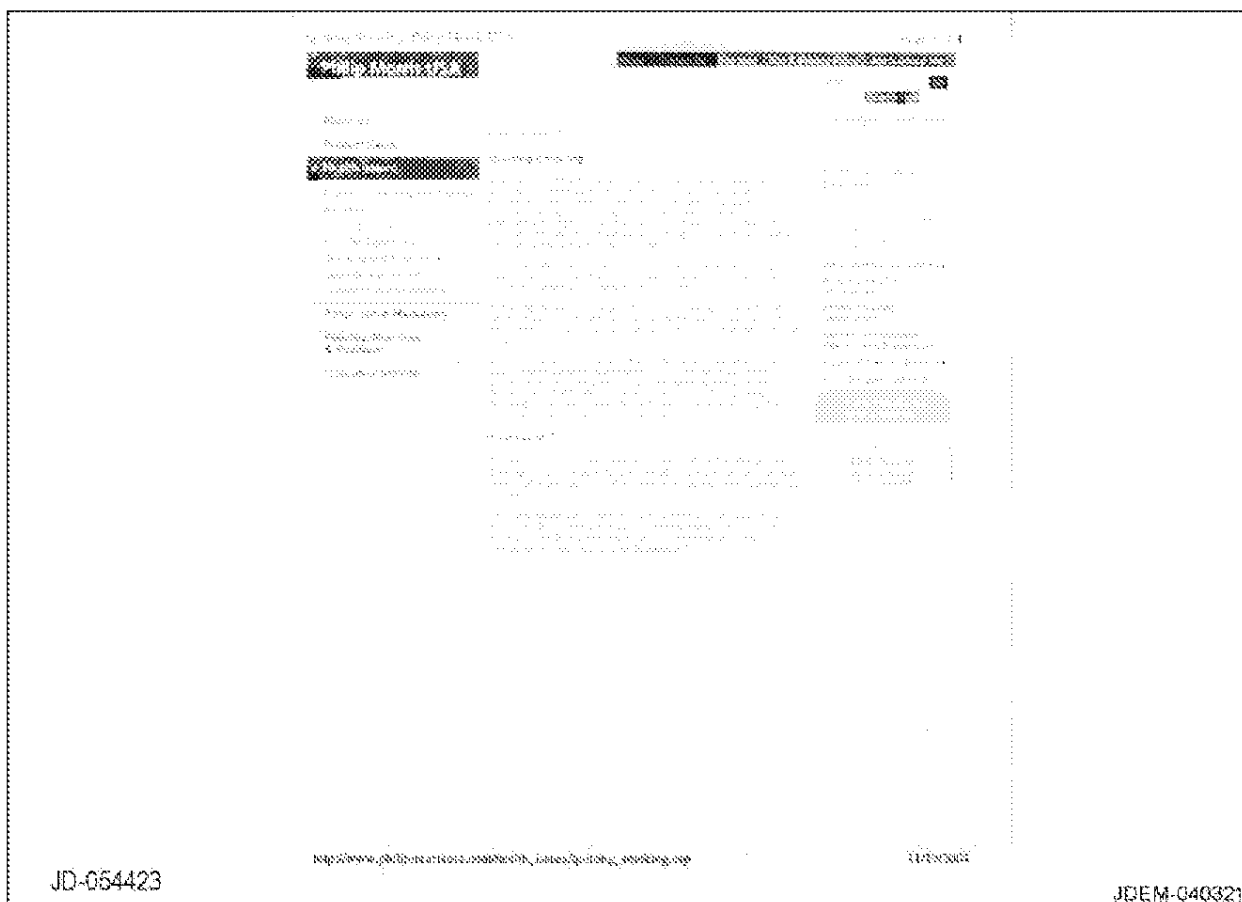
16 A: No.

17 Q: How has it changed?

18 A: We have added a new program at Philip Morris USA called QuitAssist™. If you access  
19 this page on our website today you will find a link to QuitAssist™.

20 Q: I am now showing you a different page that is also entitled "Quitting Smoking" –  
21 what is this page, JDEM-040308?

22 A: This is a copy of the quitting smoking page as it appears on our website today.



1 JD-054423

2 Q: Is this a true and accurate copy of what someone would look at if they pulled up this

3 section of the website?

4 A: Yes.

5 Q: What is QuitAssist™?

6 A: QuitAssist™ is a free information resource offered by Philip Morris USA. It is intended

7 to connect smokers who have decided to quit to a wealth of expert quitting information from

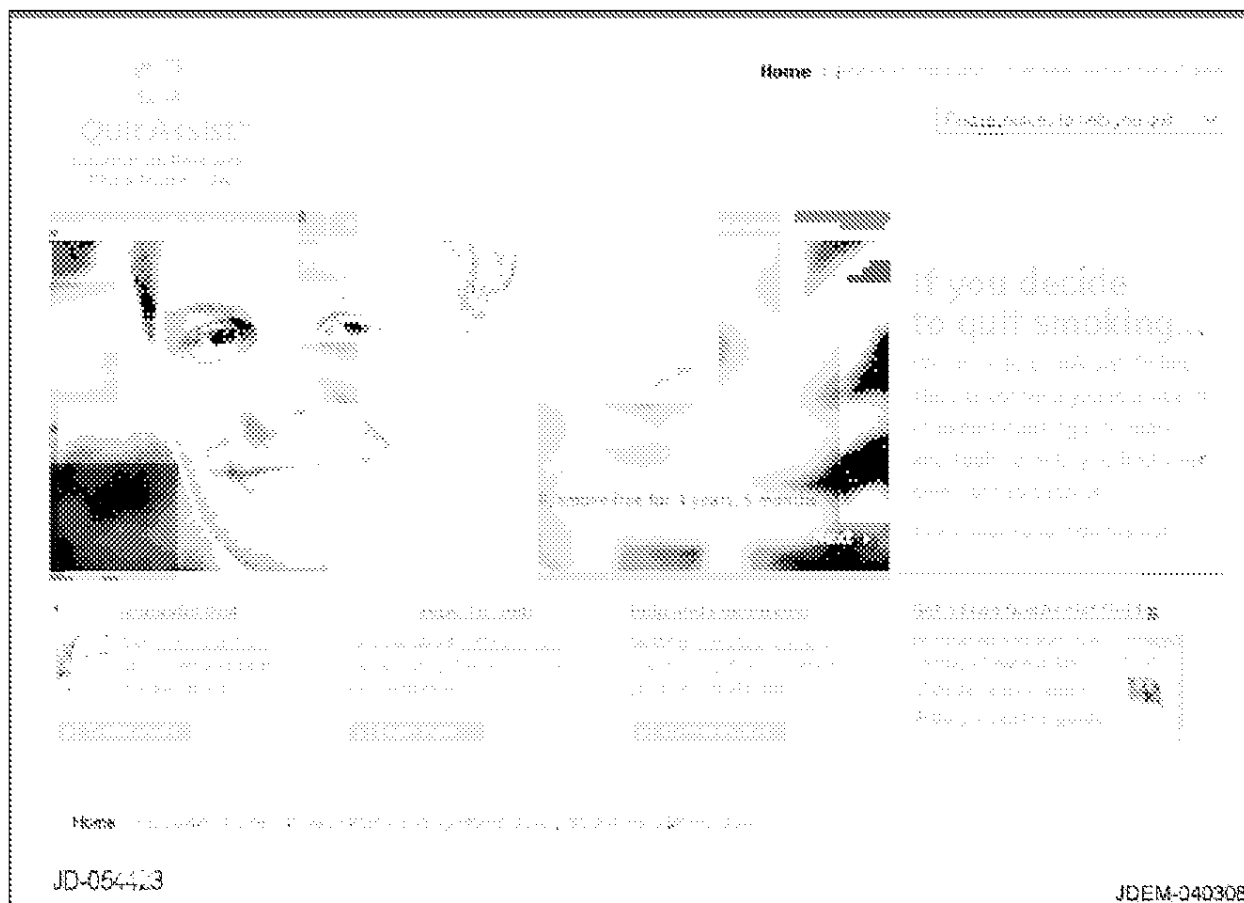
8 public health authorities.

9 Q: When did Philip Morris USA launch Quit Assist?

10 A: In September of 2004.

11 Q: I am now showing you a page entitled QuitAssist™ – what is this page?

1 A: This is where you would be directed if you linked to QuitAssist™



2  
3 Q: Is this a true and exact copy of what a viewer would see?

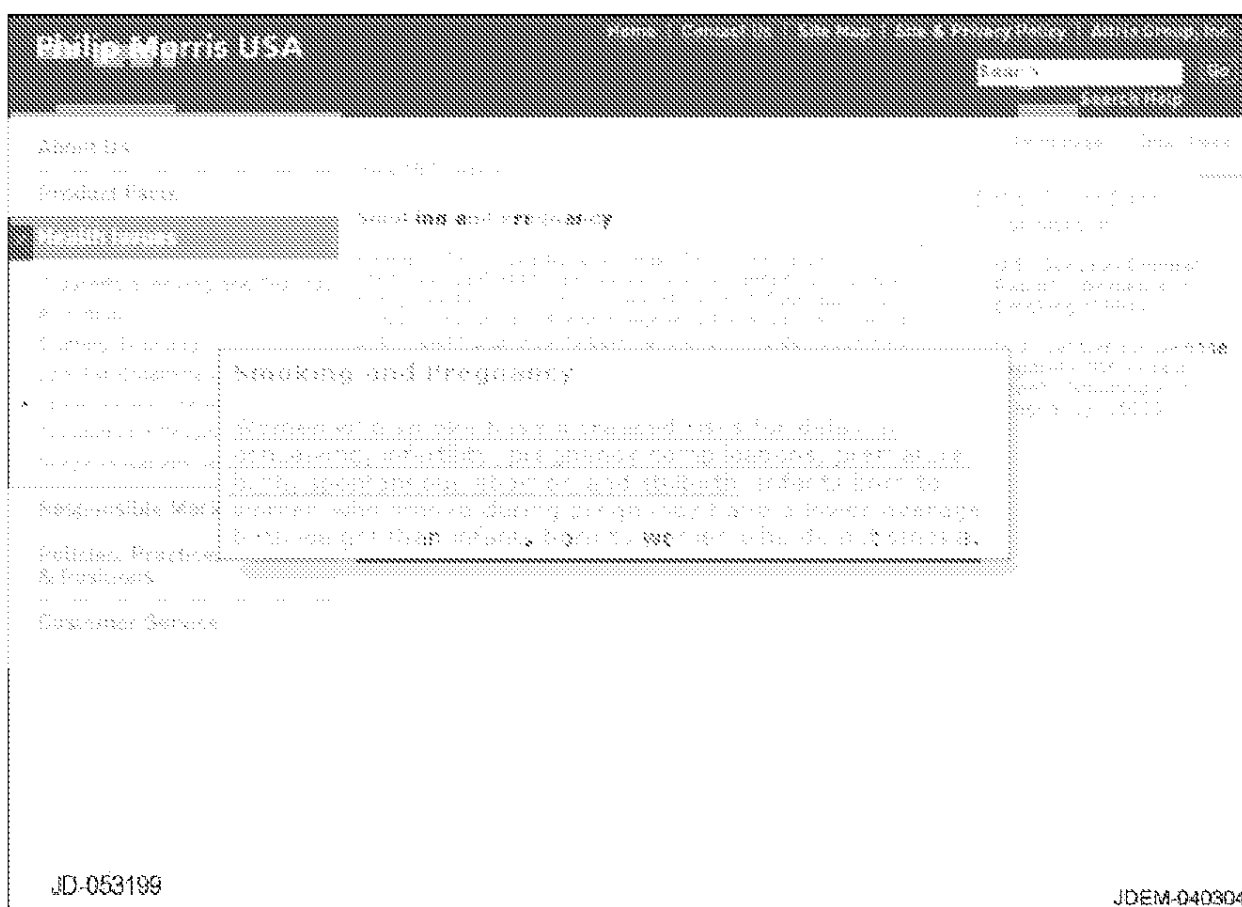
4 A: Yes.

5 Q: What sort of information is Philip Morris USA providing here?

6 A: This page provides adult smokers with information that can help them quit smoking,  
7 including access to websites, guides, telephone quitlines, success stories and quitting programs.  
8 People can also download a free quit assist guide or order a free copy.

9 Q: In the six months since Quit Assist has been in place how has the program been  
10 received?

- 1 A: Howard Willard can give you the details but the website has received a substantial  
2 number of hits and we have distributed a large number of brochures.
- 3 Q: I want to turn back to the "Health Issues" page, could you please read the fifth issue  
4 listed?
- 5 A: "Smoking and Pregnancy."
- 6 Q: Is this a copy of the smoking and pregnancy page, JDEM-040304?
- 7 A: Yes.



- 8
- 9 Q: What does the website state regarding smoking and pregnancy?
- 10 A: "Women who smoke have increased risks for delay in conceiving, infertility, pregnancy  
11 complications, premature birth, spontaneous abortion and stillbirth. Infants born to women who



1 smoke during pregnancy have a lower average birth weight than infants born to women who do  
2 not smoke. The risks for sudden infant death syndrome (SIDS) are increased among the infants  
3 of women who smoke during pregnancy. Women who quit smoking before or during pregnancy  
4 reduce the risk of such adverse reproductive outcomes. For pregnant women, smoking is also  
5 likely to put their babies at risk for poor lung development, asthma and respiratory infections."

6 Q: Does this section of the website provide any other information?

7 A: There are links to the page on quitting smoking that we just discussed, as well as the 2001  
8 Surgeon General's Report on women and smoking and the CDC's fact sheet on smoking and  
9 pregnancy.

10 Q: Why does Philip Morris USA provide this information?

11 A: As we say in our Mission Statement, we want to make sure adult smokers understand the  
12 health effects of smoking. That would include women who are pregnant, especially given both  
13 the 2001 Surgeon General's Report and the 2004 Surgeon General's Report on the subject.

14 Q: Turning back to the "Health Issues" page, what is the sixth issue listed?

15 A: "Secondhand Smoke."

16 Q: Is secondhand smoke another term for describing ETS?

17 A: Yes.

18 Q: Let me show you a call out of what it says about ETS, JDEM-040306. Could you  
19 please read the first and second paragraphs under "Health Issues" "Secondhand Smoke"?

20 A: "Secondhand smoke, also known as environmental tobacco smoke or ETS, is a  
21 combination of the smoke coming from the lit end of a cigarette plus the smoke exhaled by a  
22 person smoking. Public health officials have concluded that secondhand smoke from cigarettes  
23 causes disease, including lung cancer and heart disease in non-smoking adults, as well as causes

1 conditions in children such as asthma, respiratory infections, cough, wheeze, otitis media (middle  
2 ear infection) and Sudden Infant Death Syndrome. In addition, public health officials have  
3 concluded that secondhand smoke can exacerbate adult asthma and cause eye, throat and nasal  
4 irritation."



5  
6 Q: Why does Philip Morris USA provide that information on its website?

7 A: Well, once again this would be consistent with the companies' Mission to provide  
8 consumers with public health information regarding smoking and health issues. We believe that  
9 the public should be guided by the conclusions of public health officials regarding the health  
10 effects of secondhand smoke. For example, people should know what public health authorities  
11 say when they are deciding whether to be in places where secondhand smoke is present, or if

1 they are smokers, when and where to smoke around others. We also believe that people should  
2 know that particular care should be exercised where children are concerned, and adults should  
3 avoid smoking around children.

4 Q: Does the website contain links to public health information that concludes ETS  
5 causes disease?

6 A: Yes. We want the public to be able to access the information that has been prepared by  
7 the public health community on this issue.

8 Q: Could you please read the last paragraph of this section of the website?

9 A: "We also believe that the conclusions of public health officials concerning environmental  
10 tobacco smoke are sufficient to warrant measures that regulate smoking in public places. We  
11 also believe that where smoking is permitted, the government should require the posting of  
12 warning notices that communicate public health officials' conclusions that secondhand smoke  
13 causes diseases in non-smokers."

14 Q: What is Philip Morris USA's position on public place smoking restrictions?

15 A: As set forth on the website, Philip Morris USA believes that there are reasonable ways to  
16 accommodate the comfort and choices of both smoking and non-smoking adults in indoor public  
17 places, particularly hospitality venues. The company also believes that adults should be clearly  
18 informed of the smoking policy of a particular venue so that adults can choose whether or not to  
19 frequent places where smoking is permitted.

20 Q: Turning back to the "Health Issues" page -- what is the fourth point down?

21 A: That link directs you to the page discussing low-tar cigarettes.

22 Q: Directing your attention to the current page on low-tar cigarettes could you please  
23 read the two paragraphs underneath "Philip Morris USA's Use of Brand Descriptors?"

A: "Philip Morris USA frequently describes cigarette brands using terms such as 'full flavor,' 'medium,' 'mild,' 'light' and 'ultra light.' These terms are commonly referred to as descriptors and facilitate smokers' ability to distinguish among different product offerings. Descriptors are generally used as a point of comparison (with respect to attributes such as strength of taste and flavor and tar and nicotine yield as measured by a machine method) for a cigarette brand in order to distinguish it from other brands on the market."

The screenshot shows the Philip Morris USA website. The header includes the company name and a navigation bar. The main content area is titled 'About Us' and features a section on 'Product Facts'. A red box highlights the following text:

Philip Morris USA (PM USA) frequently describes cigarette brands using terms such as "full flavor," "medium," "mild," "light" and "ultra light." These terms are commonly referred to as "descriptors" and facilitate smokers' ability to distinguish among different product offerings.

Below the highlighted text, there is a section titled 'Philip Morris USA's Use of Brand Descriptors' which explains that these terms are used to help smokers choose products based on their preferences. The text also mentions that the company is committed to providing accurate information and that the descriptors are based on machine-measured tar and nicotine yields.

At the bottom of the page, there is a footer with the text 'JD-053199' and 'JD-053199'.

Q: JD-053199

Why does Philip Morris USA provide this information on its website?

A: Providing this information to consumers is consistent with our Mission and Values. It is important for consumers to understand what descriptors mean and are intended to convey.

Q: Could you please read the next paragraph?

1 A: "A smoker should not assume that brand descriptors such as 'light' or 'ultra light' indicate  
2 with precision either the actual amount of tar and nicotine inhaled from any particular cigarette,  
3 or the relative amount as compared to competing cigarette brands. Some researchers report that  
4 smokers of 'light' cigarettes inhale as much tar and nicotine as from full-flavor brands. The  
5 amount of tar and nicotine inhaled will be higher if, for example, a smoker blocks ventilation  
6 holes, inhales more deeply, takes more puffs or smokes more cigarettes."

7 Q: Why does Philip Morris USA provide this information on its website?

8 A: Because it is the conclusion of the National Cancer Institute, a part of the government,  
9 and it is important for smokers to be aware of this information.

10 Q: Do brand descriptors indicate with precision the amount of tar and nicotine inhaled  
11 from a particular cigarette?

12 A: No. It is my understanding that these terms represent a range of yields, according to the  
13 FTC test method. In order to use that term a product must fall within that range.

14 Q: Showing you JD-046719, do you recognize this document?

15 A: Yes, it is a version of our website when it first went online in 1999.

16 Q: Is this a true and accurate copy?

17 A: Yes.

18 Q: Turning to pages twenty-three and twenty-four of the 1999 version of the website  
19 JD-046719, did Philip Morris USA provide information regarding brand descriptors in  
20 1999?

21 A: Yes.

22 Q: What information did Philip Morris USA provide on its website in 1999?

1 A: "Philip Morris USA does not imply in its marketing, and smokers should not assume, that  
2 lower-yielding brands are 'safe', or are 'safer' than full-flavor brands. Health warnings are  
3 required on all of our brands, irrespective of their tar and nicotine yields. The FTC has recently  
4 stated that 'if consumers are concerned about the health effects of smoking cigarettes they should  
5 stop smoking. Simply put, there is no such thing as a safe smoke'. The Commission also  
6 reiterates that '[t]he National Cancer Institute and the U.S. Food and Drug Administration stated  
7 in comments that new data suggests that the limited health benefits, previously believed to be  
8 associated with lower tar and nicotine cigarettes, may not exist.'"

9 Q: Turning back to the current version of the website, please read the fourth  
10 paragraph down.

11 A: "Philip Morris USA does not imply in its marketing, and smokers should not assume that  
12 lower-yielding brands are safe or safer than full-flavor brands. Health warnings are required on  
13 all of our brands, irrespective of their tar and nicotine yields. The Federal Trade Commission  
14 (FTC) has stated that "smoking low tar' or 'light' cigarettes does not eliminate the health risks of  
15 smoking. If you're concerned about the health risks of smoking, stop smoking . . . There's no  
16 such thing as a safe smoke."

17 Q: Why did Philip Morris USA change its website?

18 A: Because in 2001 the NCI published Monograph 13 where it concluded that it had not  
19 been established that low-tar cigarettes were safer than full-flavor cigarettes, and we wanted to  
20 communicate that information to smokers.

21 Q: Why does Philip Morris USA state that on its website?

22 A: Because doing so is consistent with our Mission. As I stated previously, Philip Morris  
23 USA believes that if smokers are concerned about the risks associated with smoking that they

1    should quit. We also believe that it is important for people to know what the FTC and the NCI  
2    have stated regarding low-tar products.

3    Q:     Could you please describe the information contained in the lower right hand column  
4    of the web page?

5    A:     A viewer can link to different reports on low tar products that have been prepared by  
6    entities such as the NCI, the Institute of Medicine, the FTC and the CDC.

7    Q:     Do some of these entities conclude that smoking low tar products is hazardous to  
8    one's health?

9    A:     Yes they do.

10   Q:     Why does Philip Morris USA provide those links?

11   A:     So people can access the information that the public health community has prepared on  
12   the subject.

13   Q:     Directing your attention to the upper right hand corner labeled "information on  
14   understanding tar & nicotine numbers," what is this link, JDEM-040310?

15   A:     If you click on that link you will be directed to a page that discusses tar and nicotine  
16   numbers.

17   Q:     Is this where I am directed to if I click on that link?

18   A:     Yes.

JDEM-046210

3 A: This page provides information that was covered on the "low tar cigarettes" page, but in  
4 greater detail. We provide information regarding the fact that no two smokers smoke a cigarette  
5 alike, what and how the machine tests actually measure tar and nicotine, and what Philip Morris  
6 USA's brand descriptors mean.

8     A:     We believe it is important that the public receive the messages that are being conveyed  
9     by the public health community. Moreover, we want people to be aware that the machine tests  
10    are not intended to reflect actual smoking behavior.



1 Q: Directing your attention to the page on low-tar cigarettes, could you please read the  
2 first paragraph?

3 A: "No two smokers smoke cigarettes exactly the same way. The tar and nicotine yield  
4 numbers that are reported for cigarette brands are not meant (and were never intended) to  
5 communicate the precise amount of tar or nicotine inhaled by any individual smoker from any  
6 particular cigarette. These numbers come from standardized testing methods, which compare  
7 different brands when smoked by a machine under identical laboratory conditions. As regulators  
8 have said since their introduction, these tests - including those developed in cooperation with the  
9 U.S. Federal Trade Commission (FTC) and the International Organization for Standardization  
10 (ISO) - show the relative differences in yields among brands, assuming that each brand is held  
11 and smoked the same way as it is in the machine."

12 Q: Turning back to the 1999 version of the website, is the text you just read also stated  
13 identically in the first paragraph of on page nineteen of JD 46719?

14 A: Yes.

15 Q: Directing you back to the May 2004 version of the website could you please turn to  
16 the page with the heading "Machine Tests of Tar and Nicotine Yields," what does the third  
17 paragraph address?

18 A: The fact that neither the FTC smoking machine method nor the ISO method developed  
19 within the international community were ever intended to reflect smoker behavior.

20 Q: What is the FTC testing method?

21 A: The FTC testing method is a machine yield test that the FTC developed to measure the tar  
22 and nicotine yields of cigarettes smoked under certain conditions.

23 Q: Could you please read the paragraph?

1 A: "These machine methods were never intended to reflect what and how smokers actually  
2 inhale. Indeed, in 1967 when the FTC announced the completion of its trial tests of the current  
3 method, it stated that '[n]o test can precisely duplicate conditions of actual human smoking and,  
4 within fairly wide limits, no one method can be said to be either 'right' or 'wrong' . . . the purpose  
5 of testing is not to determine the amount of tar and nicotine inhaled by any human smoker, but  
6 rather to determine the amount of tar and nicotine generated when a cigarette is smoked by  
7 machine in accordance with the prescribed method.' Read the FTC's 1967 press release  
8 describing the limitations of standardized machine tests."

9 Q: Why does Philip Morris USA provide this information?

10 A: To explain to the public how tar and nicotine numbers are derived and that they were  
11 never intended to reflect actual smoker behavior.

12 Q: Now turning back to the 1999 website, JD-046719, could you read the third  
13 paragraph on page twenty-two from your 1999 website underneath the header "Machine  
14 Tests of Tar and Nicotine Yields" ?

15 A: "These machine methods were never intended to reflect what and how smokers actually  
16 inhale. Indeed, in 1967 when FTC announced the completion of its trial tests of the current  
17 method, it stated that "[n]o test can precisely duplicate conditions of actual human smoking and,  
18 within fairly wide limits, no one method can be said to be either 'right' or 'wrong' - the purpose of  
19 testing is not to determine the amount of tar and nicotine inhaled by any human smoker, but  
20 rather to determine the amount of tar and nicotine generated when a cigarette is smoked by  
21 machine in accordance with the prescribed method."

22 Q: Is that language virtually identical to your 2004 website?

23 A: Yes.

1 Q: Has Philip Morris USA communicated with the public on low-tar cigarettes in ways  
2 other than its website?

3 A: Yes. We have communicated with the public regarding light cigarettes on our package  
4 inserts, free-standing inserts, print advertising and television commercials.

5 Q: I would like to turn back to the homepage of the website, could you please read me  
6 the last link?

7 A: "Surgeon General Reports."

8 Q: What information is provided in this link?

9 A: This link directs the viewer to the website of the Office of the Surgeon General. Once at  
10 that website they can access any and all reports that have been prepared by the United States  
11 Surgeon General.

12 Q: Do any of these reports indicate that smoking is harmful to health?

13 A: Yes.

14 Q: Do any of these reports indicate that smoking is addictive?

15 A: Yes.

16 Q: Why does Philip Morris USA provide this information?

17 A: Because the Surgeon General's Reports are key pieces of information regarding smoking  
18 and health. Providing that information is consistent with our Mission.

19 Q: I want to turn back to the homepage and discuss another topic on your website,  
20 namely ingredients. Does Philip Morris USA disclose the ingredients contained in its  
21 cigarette brands on its website?

22 A: It does.

1 Q: If I wanted to access information regarding the ingredients contained in Philip  
2 Morris USA's products where would I go?

3 A: You would click on the link that states "Ingredients in Cigarettes" right beneath the  
4 "PRODUCT FACTS" link.

5 Q: Let me show you the page of the Philip Morris USA website entitled "Ingredients in  
6 Cigarettes," JDEM-040309. What does this page tell the reader?

7 A: This is what you are directed to when you click on the "Ingredients in Cigarettes" link  
8 that I just mentioned. This page introduces the topic of ingredients to the reader and discusses  
9 our support for having the Government review the use of ingredients in cigarettes, just as they do  
10 for other products. Philip Morris USA supports legislation that would give the FDA this  
11 authority, among other things, and states that on our website.

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Home Page Site Map Site Search

About Us  
 Product Range  
 Where to Buy  
 Links & Resources  
 Making Our Cigarettes

The primary ingredient in each of our cigarette brands is tobacco. In fact, our typical American-blended cigarette consists of approximately 90% tobacco in the "filler" portion, which is the column (or rod) above the filter.

**Cigarette Ingredients**

Philip Morris USA believes that the information should be made available to the public regarding the ingredients of our cigarettes. The following information is provided for informational purposes only. It is not intended to be a substitute for professional medical advice. The information is provided for informational purposes only. It is not intended to be a substitute for professional medical advice. The information is provided for informational purposes only. It is not intended to be a substitute for professional medical advice.

JD-053199

JDEM-040309

Q: I will cover FDA regulation in greater detail later, but for now I want to stay focused on ingredient-specific information on your website. Let me show the first paragraph of this page. Could you please read that paragraph?

A: "The primary ingredient in each of our cigarette brands is tobacco. In fact, our typical American blended cigarette contains at least 90% tobacco in the "filler" portion, which is the column (or rod) above the filter."

Q: Explain what you are trying to communicate here?

A: Philip Morris USA is informing the public that most of the cigarette is made up of tobacco, although there are some other ingredients.

Q: What does Philip Morris USA discuss in the second paragraph of this page?

1 A: Philip Morris USA makes it clear that there are ingredients other than tobacco in  
2 cigarettes. We also state that we have disclosed those ingredients to the U.S. Department of  
3 Health and Human Services since 1986.

4 Q: What is the link on the upper right hand corner of the web page?

5 A: If someone wanted to learn more about the ingredients in our products they can click on  
6 this link to receive additional information.

7 Q: Showing you the ingredients page, is this the page that I am directed to when I click  
8 on the link you just mentioned?

9 A: Yes.

10 Q: What is the information contained in this page?

11 A: This page allows the viewer to access information regarding the three categories of  
12 cigarette ingredients used in the manufacture of Philip Morris USA cigarettes.

13 Q: Could you explain each category?

14 A: There is a box with a dotted line border that contains a description of each category. The  
15 category on the far left allows you to view ingredients by brand. Clicking on this link provides,  
16 in weighted order basis, each ingredient that is contained in a particular brand of cigarettes. The  
17 middle category provides a composite list of all of the ingredients that we use, including the  
18 ingredients that are in all of our flavor formulas. It shows the maximum weight of each  
19 ingredient and how they are used in our products. The last category, on the far right hand side of  
20 the box, provides a link to all non-tobacco-related ingredients.

21 Q: Looking at the first category, "Ingredients by Brand," how do I obtain the  
22 ingredients of a specific product?

23 A: You simply scroll to the brand and packaging that you want to review.

1 Q: And you can do that for all of the cigarette brands that you sell nationally?

2 A: Yes.

3 Q: If we were to pick Marlboro Full Flavor 100s Filter Box, what would I find on the  
4 Philip Morris USA website?

5 A: You would find a listing of the principal and flavor ingredients that are added to tobacco  
6 at levels of 0.1 percent or more of the weight of the tobacco rod. The ingredients are listed in  
7 descending order by weight. To use your example, for Marlboro Full Flavor 100s Filter Box you  
8 would see the following:

9 Tobacco  
10 Water  
11 Sugars (Sucrose and/or Invert Sugar and/or High Fructose Corn Syrup)  
12 Propylene Glycol  
13 Glycerol  
14 Licorice Extract  
15 Diammonium Phosphate  
16 Ammonium Hydroxide  
17 Carob Bean and Extract  
18 Cocoa and Cocoa Products  
19 Natural and Artificial Flavors

20 Q: The last category states "Natural and Artificial Flavors." Are those natural and  
21 artificial flavors disclosed anywhere on the website?

22 A: Yes, they are. They are disclosed in the composite list of ingredients that I mentioned  
23 earlier. That was the middle category of the three.

24 Q: How do I view that composite list?

25 A: You click on the link that states "View Tobacco Ingredients for All PM USA Brands."

26 Q: Please look at the document I am show you. Is this the page you just referenced that  
27 displays the composite list?

28 A: Yes, it is.

1 Q: Could you explain what this list is?

2 A: It lists all of the ingredients that are used, including those that are used in any flavor  
3 formula, including those considered trade secret. It provides the quantity not exceeded in terms  
4 of the percent of the weight of the cigarette and the function of the ingredient.

5 Q: How do I access the disclosure of non-tobacco ingredients?

6 A: You would simply click on the "View Non-Tobacco Component Ingredients for All PM  
7 USA Brands" link.

8 Q: Is every ingredient that is contained in every Philip Morris USA product disclosed  
9 on your website?

10 A: Yes. Every ingredient can be found in one of these three categories that we have  
11 discussed today.

12 Q: Is every ingredient that is contained in every Philip Morris USA product disclosed  
13 on your website?

14 A: Yes. Every ingredient can be found in one of these three categories that we have  
15 discussed today.

16 Q: Is the website the only disclosure of Philip Morris USA's ingredients?

17 A: No. Philip Morris USA discloses its ingredients to the Department of Health and Human  
18 Services.

19 Q: How long has Philip Morris USA been required to report its cigarette ingredients?

20 A: Since 1986.

21 Q: What does the government do with the list?

22 A: The Secretary of Health and Human Services reviews the list and is required to report to  
23 Congress any ingredient that the Secretary believes may pose a health risk to smokers.



1 Q: Has the Secretary of Health and Human Services ever objected to any of the  
2 ingredients on the list?

3 A: Not to my knowledge.

4 Q: Has the Office of Smoking and Health ever asked for more information about  
5 ingredients that Philip Morris USA ?

6 A: Yes. Although Philip Morris USA was not required to provide additional information, at  
7 times, the CDC would ask for additional information about maximum use levels and the total  
8 amount used each year, and Philip Morris USA voluntarily provided the information. After the  
9 CDC requested the information on a number of occasions, the industry agreed to voluntarily  
10 provide the information on an annual basis without further specific requests.

11 Q: Mr. Szymanczyk, we have been discussing the information Philip Morris USA  
12 provided on its website as of May 7, 2004. Is that information still available on Philip  
13 Morris USA's website today?

14 A: Yes, it is.

15 B. EFFORTS TO PUBLICIZE WEBSITE

16 Q: Did Philip Morris USA make efforts to publicize the existence of its website?

17 A: Yes, we did.

18 Q: What did Philip Morris USA do to inform people of the website's existence when it  
19 first went online?

20 A: When the web site was launched we issued a press release announcing the web site. The  
21 press release generated a significant amount of news coverage.

22 Q: Has the company done anything else to communicate with the public regarding the  
23 website?

1 A: Yes. In 1999, we began placing the website address on packages of cigarettes. We are  
2 currently running television commercials publicizing our website. We have also distributed a  
3 free-standing insert and a package onsert that provided information regarding our website. We  
4 have placed "tear-off sheets" at retail that provide consumers with information contained in the  
5 website. In January of 2000, we began placing a statement in all of our cigarette brand  
6 advertising directing people to our website. The statement appeared just below the FTC "tar"  
7 and nicotine ratings, and it provided both our website address and our 1-800-number.

8 Q: Are you familiar with the materials that your company has distributed to inform  
9 people of its website?

10 A: Yes.

11 Q: Showing you JDEM-040177 does this demonstrative illustrate the communication  
12 vehicles that you just described?

13 A: Yes it does.

[illegible]

JOEM-040177

Q: Let us discuss some of the specific means of communication that have been illustrated above. I'm handing you what has been marked as JD-052920. Could you explain what that document is?

1 A: This is the direct mailing that we sent to out to people who called our 1-800 number and  
2 were looking for information on our website.

3 Q: What is provided in this document?

4 A: It provides information about our webpages, including snapshots of certain webpages.  
5 The document also informs people who do not have a computer of phone numbers they can call  
6 to access certain public health information.

7 Q: Did Philip Morris USA communicate regarding the website with members of its  
8 Adult Smoker Database?

9 A: Yes.

10 Q: Showing you JD-042707 could you please explain what this document is?

11 A: This is a flyer we sent to everyone on our Adult Smoker database informing them of our  
12 website and the type of information they can access on it. The flyer also provides a number  
13 people can call if they do not have access to a computer so that they can receive the mailing that  
14 we just discussed.

15 Q: Earlier you mentioned that Philip Morris USA began placing its website address on  
16 its brand advertising, could you please explain what you did?

17 A: In January of 2000 we began listing our website address on all brand advertising.  
18 Consistent with our other materials we also listed a 1-800 number people could call to receive  
19 the information contained on our website. Of course we do not run cigarette brand advertising in  
20 magazines any more, but when we did we included that information. We also include it in any  
21 advertising that we send to our customers on our Adult Smoker Database.

22 Q: You also indicated that Philip Morris USA has distributed information regarding its  
23 website on "tear off sheets," could you please explain that?

1 A: We have distributed tear-off sheets to retailers.

2 Q: Showing you JD-053192 do you recognize this document?

3 A: Yes. This is a copy of one of the tear-off sheets that we distributed to our retailers.

4 Q: You testified that Philip Morris USA is currently running commercials publicizing

5 the website, correct?

6 A: Yes. In June of 2003 we began running a series of television commercials informing

7 people of the website.

8 Q: Showing you JD-053158, are you familiar with this?

9 A: Yes, this is a CD containing the advertisements we are running on our website.

10 Q: Does this disc contain true and accurate copies of the commercials that have run on

11 television?

12 A: Yes.

13 Q: In Philip Morris USA's commercials regarding its website, does the company

14 provide any other way to obtain the information found on the website?

15 A: Yes, we provide a 1-800 number.

16 Q: Why does Philip Morris USA do that?

17 A: Many people have access to the internet, but not everyone does. So we want all people to

18 have access to the information.

19 Q: You also mentioned a free-standing insert, what is a free-standing insert?

20 A: A free-standing insert is a self-contained piece of advertising that is inserted into a

21 newspaper. Philip Morris USA placed a free standing insert into newspapers across the country

22 in an effort to inform the general public about our website, the subjects it covers and to

23 encourage them to visit it.

1 Q: When did you publish the insert?

2 A: The insert was placed in newspapers from November 13, 2002 to November 17, 2002.

3 Q: In which newspapers did the insert appear?

4 A: The insert appeared in approximately 30 newspapers, including major newspapers such  
5 as the New York Times, the Washington Post, and U.S.A. Today.

6 Q: Showing you JD-052969, is this a copy of the insert?

7 A: Yes.

8 Q: Turning to the page marked with Bates number 3000155621, could you please  
9 identify the subjects listed?

10 A: Cigarette smoking and disease, addiction, quitting smoking, low-tar cigarettes,  
11 ingredients in cigarettes, secondhand smoke, youth smoking prevention and resources.

12 Q: Turning to the page marked with Bates number 3000155262, could you please  
13 describe the information contained on this page?

14 A: This is a partial image of our website page on smoking and disease.

15 Q: Does it accurately reflect Philip Morris USA's website page?

16 A: Yes.

17 Q: Does the insert provide similar information regarding all of the subjects you  
18 referenced on page 3000155621?

19 A: Yes it does.

20 Q: You also mentioned a package onsert, what is a package onsert?

21 A: An onsert is a small booklet or brochure that is located on the cigarette package  
22 underneath a cellophane wrapper.

23 Q: Showing you JD-052904. Can you explain for the judge what this is?

1 A: This onsert was distributed by Philip Morris USA in the first quarter of 2004. It informs  
2 adult smokers that they can find more information about tobacco issues on Philip Morris USA's  
3 website, and directs consumers to the website, or to a 1-800 number to call to get more  
4 information.

5 Q: Why does Philip Morris USA provide a 1-800 number?

6 A: For the same reason we do on our commercials. We want people to be able to access the  
7 information in our website if they do not have Internet access.

8 Q: What are the issues highlighted on this onsert?

9 A: The issues highlighted on this onsert include: Serious health effects of smoking; Quitting  
10 smoking; Ingredients in Philip Morris USA brand cigarettes; and Tools and Tips for talking to  
11 kids about not smoking.

12 Q: How was this onsert distributed?

13 A: This onsert was placed on a week's volume of cigarette packs for Philip Morris USA's  
14 major brands, which means we would have covered approximately 90 percent of Philip Morris  
15 USA's volume.

16 Q: How are you estimating that number?

17 A: Most smokers purchase at least one pack per week. We put the onserts on all of the  
18 major brands, which represent 90 percent of Philip Morris USA's volume. The onserts were run  
19 for a week. So if you figure that most smokers of our major brands purchase one pack a week,  
20 they would have received the onsert.

21 Q: Why did Philip Morris USA put this information on an onsert?

1 A. For the same reasons we have television advertising directing consumers to our website.  
2 This is just another communication vehicle, which we feel directly reaches consumers who  
3 would be interested in this information.

4 Q: Is this the first time Philip Morris USA has used an onsert to communicate with the  
5 public?

6 A: No. We originally communicated information regarding low-tar cigarettes on package  
7 onserts in 2002 and 2003.

8 C. PHILIP MORRIS USA IS RESPONSIBLY COMMUNICATING WITH  
9 THE PUBLIC REGARDING LOW TAR PRODUCTS

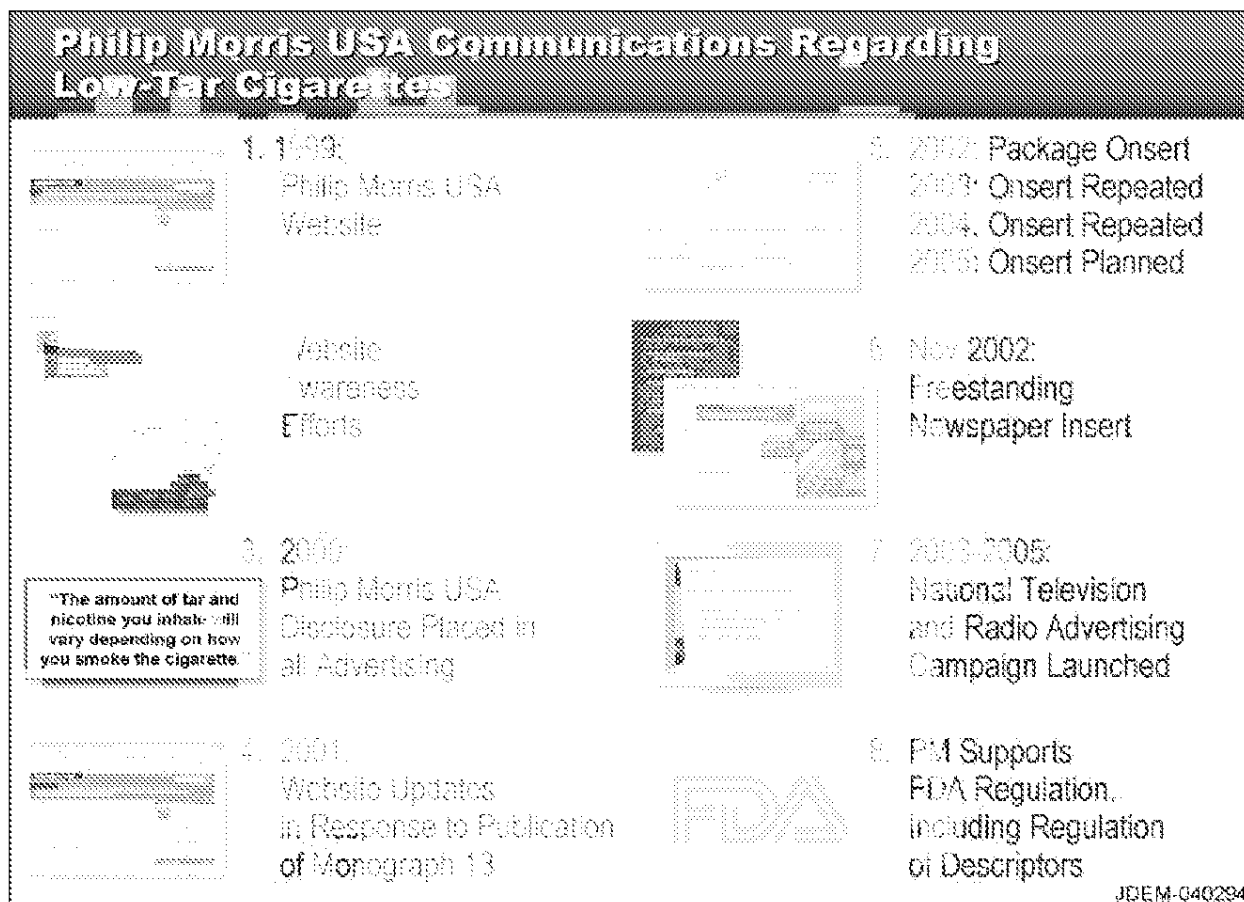
10 Q: Let's turn to that. Could you recap the different ways Philip Morris USA has  
11 communicated with the public regarding low-tar cigarettes?

12 A: Yes. Philip Morris USA obviously communicates through our website regarding low-tar  
13 issues and has since 1999. The original free-standing insert referenced the low-tar page of our  
14 website. We have used onserts and television advertising to communicate with the public  
15 regarding low-tar issues. We have placed additional statements on our advertising and removed  
16 certain phrases from our packaging.

17 Q: Showing you JDEM-040294, does this reflect the communication media that Philip  
18 Morris USA has used to communicate with the public regarding low-tar products?

19 A: Yes, it does.





Q: Why has Philip Morris USA used these different methods of communication?

A: Consistent with our Mission, we believe that it is important to communicate responsibly, openly and honestly about our products in a way that reaches a broad audience.

Q: Now we have already covered a number of these, but I would like to focus on the fourth point, which references Philip Morris USA advertising. What does this point reference?

A: In November of 2000, we began placing an additional statement in our advertisements that said: "The amount of 'tar' and nicotine you inhale will vary depending on how you smoke the cigarette." The statement also referred people to our website for more information.

Q: Did this language appear only in ads for low-tar cigarettes?

1 A: No. It appeared in every ad that contained a "tar" and nicotine disclosure, regardless of  
2 the "tar" level of the advertised brand.

3 Q: Where does the language appear?

4 A: In close proximity to the "tar" and nicotine disclosure, in the same size type.

5 Q: Why did Philip Morris USA begin including this statement in its advertisements?

6 A: Because the subject was under review by the FTC, and we thought this statement  
7 provided additional clarity that was consistent with prior FTC statements.

8 Q: You testified that Philip Morris USA has made changes to its packaging. How has  
9 the packaging changed?

10 A: In 2003, Philip Morris USA began removing phrases such as "lowered tar and nicotine,"  
11 "lower tar and nicotine" and "low tar and nicotine" from our packages.

12 Q: Did you remove these phrases from all packages in which they appeared?

13 A: Yes.

14 Q: Why did Philip Morris USA remove these phrases?

15 A: In 2001, the Government published NCI Monograph 13. Monograph 13 concluded that  
16 lower tar cigarettes are not less hazardous than other cigarettes. Given the release of Monograph  
17 13, we removed the lower tar and nicotine designations on our packages and we communicated  
18 via package onserts, free standing inserts, and television advertising that descriptors such as  
19 lights and ultra lights are not describing less hazardous cigarettes, but rather the taste and flavor.  
20 of the product, and the machine-measured levels of tar and nicotine.

21 Q: How did Philip Morris USA use package onserts to communicate with the public  
22 regarding low-tar issues?

1 A: In November of 2002, Philip Morris USA distributed a package onsert to consumers that  
2 communicated some of the findings in Monograph 13. We followed this with distributions of  
3 onserts in 2003 and 2004.

4 Q: Showing you JD-041096, what is this?

5 A: This is a copy of the onsert we distributed in 2002.

6 Q: Is the information contained on this onsert the same information that one would  
7 find on Philip Morris USA's website?

8 A: Yes.

9 Q: Why did Philip Morris USA provide this information?

10 A: It was a means of communicating this change in the Government's position regarding  
11 low-tar to consumers. Communicating this information to consumers is consistent with our  
12 Mission.

13 Q: Directing you to the bottom of page two of the onsert, what are you providing there?

14 A: We provided consumers with our website address and our 1-800 number.

15 Q: How long did Philip Morris USA run the onsert?

16 A: The onsert was included with a week's supply of all of Philip Morris USA's light and  
17 low-tar brands -- approximately 130 million packs.

18 Q: Did the information in the package onsert accurately reflect the position of the  
19 public health community at that time with respect to low tar cigarettes?

20 A: Yes.

21 Q: Did Philip Morris USA communicate with the FTC about the package onsert before  
22 it appeared?

23 A: Yes, we told the FTC in the fall of 2002 that we were planning to run the onsert.

1 Q: You mentioned onserts that were run in 2003 and 2004. What did Philip Morris  
2 USA circulate in 2003?

3 A: We circulated an onsert similar to the one in 2002.

4 Q: Showing you JD-052910, what is this document?

5 A: This is the onsert that we distributed in 2003.

6 Q: What was the distribution on this onsert?

7 A: The same as the onsert for 2002 - a week's volume of cigarette packs for "light," "ultra-  
8 light," "medium," and "mild" cigarette brands. Philip Morris USA estimates that it distributed  
9 109,552,200 packs with the onsert affixed to the package.

10 Q: Did you run onserts in 2004?

11 A: Yes. We did the same thing in 2004 that we did in 2002 and 2003. Philip Morris USA  
12 estimates that it distributed 118,539,600 packs, that contained a low-tar onsert, in 2004.

13 Q: Let me show you JD-055042. What is this document?

14 A: This is the onsert we ran in 2004.

15 Q: Is Philip Morris USA planning on running a low-tar onsert in 2005?

16 A: Yes.

17 Q: When Philip Morris USA runs these onserts does it run any other forms of  
18 communication?

19 A: Yes. We have run television commercials that contain the onsert information regarding  
20 low-tar cigarettes.

21 Q: Showing you JD-053158, are you familiar with this?

22 A: Yes, this is a CD containing the advertisements we are running on our website.

1 Q: Does this disc contain true and accurate copies of the commercials that are running  
2 on television?

3 A: Yes.

4 Q: Do you believe that your company is communicating with the public in a manner  
5 that is consistent with your Mission and Values?

6 A: Yes. I believe we are but I also believe that our Values call for us to constantly try to  
7 improve what we are doing.

8 IV. PHILIP MORRIS USA RESPONSIBLY ADVERTISES AND MARKETS TO  
9 ADULT SMOKERS

10 Q: Mr. Szymanczyk, I want to turn back to our chart discussing Philip Morris USA's  
11 recent business practices and look at bullet point two - "Responsible Marketing,  
12 Advertising and Retailing of Cigarettes." JDEM-040287. During the time that you have  
13 been employed at Philip Morris USA have you noticed a change in Philip Morris USA's  
14 advertising and marketing practices?

15 A: Yes, I have.

## Recent Business Practices

No Reasonable Likelihood of Furthering or Causing All or Substantial Portion of Wrongdoing in the Future

10/10/2013 10:17:11 AM

1. Responsible Communications With Public Regarding Tobacco Issues
2. Responsible Marketing, Advertising and Retailing of Cigarettes
3. Youth Smoking Prevention Activities
4. Recent Research and Development Activities Regarding Less Hazardous Cigarettes
5. Compliance With the Master Settlement Agreement



Government's Evidentiary Gap

JCEM-041257

Q: Could you generally describe those changes?

A: Our practices have certainly changed as a result of the Master Settlement Agreement. We have made it our goal to comply with the letter and spirit of the MSA. In addition, in an effort to respond to concerns expressed by government and public health authorities that the overall amount and visibility of advertising and marketing could influence youth to smoke, we have gone beyond the requirements of the MSA by taking additional steps to reduce the profile of our cigarette brand advertisements and other marketing programs.

Q: What is the Master Settlement Agreement?

A: An agreement between 46 states and certain tobacco companies to settle litigation that had been filed by the attorneys general against the tobacco companies.

1 Q: Does the Master Settlement Agreement sometimes go by the letters MSA?

2 A: That is correct.

3 Q: Does it contain provisions that govern how Philip Morris USA can market, advertise  
4 and promote its cigarettes?

5 A: Yes.

6 Q: And you testified that you have also gone beyond some of the provisions of the MSA  
7 in your policies, correct?

8 A: Yes.

9 Q: What are some of the actions you have taken that have gone beyond the MSA?

10 A: After we entered into the MSA we initially eliminated cigarette brand advertising on the  
11 back covers of magazines and, adopted more stringent criteria for selecting the magazines in  
12 which we would place our cigarette brand advertising. In 2002 we stopped running national  
13 magazine advertising for Marlboro, and as of 2004 we stopped running national magazine  
14 advertising for any of our cigarette brands. We have attempted to lower the profile of our  
15 marketing at point of sale by providing incentives to retailers for reducing the number of brand  
16 communications and limiting those communications to the area where cigarettes are  
17 merchandised.

18 Q: What cigarette brand advertising does Philip Morris USA engage in today?

19 A: We have eliminated all mass media advertising for all of our brands. What remains is  
20 direct mail to smokers 21 and over; our Indy Racing Team sponsorship, adult only events; and  
21 brand name signage at retail, but we restrict that in terms of its quantity, placement and content.

22 A. PHILIP MORRIS USA'S CURRENT ADVERTISING AND MARKETING  
23 PRACTICES ARE GOVERNED BY THE MSA

1 Q: Does the Master Settlement Agreement limit or restrict how Philip Morris USA  
2 markets its cigarettes?

3 A: Yes.

4 Q: When did Philip Morris USA enter into the Master Settlement Agreement?

5 A: In November, 1998.

6 Q: How long had you been CEO of Philip Morris USA when Philip Morris USA  
7 entered into the MSA?

8 A: One year.

9 Q: In what year did the Attorneys General first begin to file lawsuits against the  
10 tobacco companies?

11 A: 1994.

12 Q: Did these Attorney General lawsuits assert claims against the tobacco companies  
13 that were very similar to the claims being asserted in this case against the tobacco  
14 companies?

15 A: That is correct.

16 Q: Why did Philip Morris USA enter into the Master Settlement Agreement?

17 A: Really for two reasons. These lawsuits were brought by the chief legal officers of the  
18 states. During this timeframe these suits, as well as other lawsuits, were clear indicators that we  
19 were out of alignment with what society expected out of a responsible tobacco company. We  
20 began to address these issues prior to signing the MSA, but clearly the MSA was a major step.  
21 Secondly, we wanted to put the liability that these lawsuits posed behind us.

22 Q: You indicated that the Master Settlement Agreement was with 46 states, what  
23 happened to the other four states?



1 A: We have separate settlement agreements with the other four states.

2 Q: Would you please name those four states?

3 A: Mississippi, Florida, Texas and Minnesota.

4 Q: Why are there separate Settlement Agreements with these four states?

5 A: Those cases were filed earlier, so they came up earlier in the process and were settled as

6 they came up, while the rest of the states were working on a large scale settlement. So it was just

7 a matter of different timing for these four states.

8 Q: Do these four agreements contain the same terms as the Master Settlement

9 Agreement?

10 A: They varied somewhat in their terms and conditions. However, they each contained most

11 favored nations clauses that gave them the benefit of the provisions reached in the MSA. The

12 original participating companies have to meet all the restrictions in the MSA in those four states.

13 Q: Showing you JD-045158, what is this document?

14 A: This is the Master Settlement Agreement.

15 Q: If you turn to the signature pages in the back of the document -- can you confirm

16 that your company, Philip Morris USA, signed the Master Settlement Agreement?

17 A: Yes it did.

18 Q: What date did Philip Morris USA sign this agreement?

19 A: November 23, 1998.

20 Q: And what other tobacco manufacturers that are defendants in this case signed this

21 agreement?

22 A: Brown & Williamson and R.J. Reynolds, who have since merged, Lorillard and Liggett.

1 Q: Let me now hand you JD-064832, JD-012500, JD-012501 and JD-012504 and ask  
2 you to identify these documents?

3 A: These are the four separate State Settlement Agreements with Florida, Minnesota,  
4 Mississippi and Texas.

5 Q: Did your company sign those four agreements?

6 A: That is correct.

7 Q: Who else signed them?

8 A: Brown & Williamson, R.J. Reynolds and Lorillard.

9 Q: What happened once those Attorney General Settlement Agreements were signed  
10 and made final with the states?

11 A: They became part of the court proceedings in those cases.

12 Q: Are there court orders in all 50 states, the District of Columbia and other  
13 jurisdictions covered by the MSA that incorporate the terms of the these Attorney General  
14 Settlement Agreements?

15 A: Yes.

16 Q: Under these orders can the MSA or state settlement agreements be enforced by the  
17 Attorneys General?

18 A: That is correct.

19 Q: Does the MSA regulate the conduct of the tobacco manufacturers ?

20 A: Yes.

21 Q: Showing you JDEM-040295 what is this document?

22 A: This is a chart I have prepared summarizing the different areas covered by the MSA.

## MSA Areas of Regulation

Restrictions on Advertising and Marketing

Prohibition on Youth Targeting

Prohibition of Suppression of Research

Prohibition of Material Misrepresentations

Public Access to Documents

Dissolution of the Tobacco Institute, Inc.,  
the Council for Tobacco Research-USA, Inc.  
and the Center for Indoor Air Research

JD-040258

JDEM-040295

1  
2 Q: Looking at the first point "Restrictions on Advertising and Marketing" - what is  
3 that referencing?

4 A: This references the provisions of the MSA that govern our advertising and marketing  
5 practices.

6 Q: Does the MSA prohibit Philip Morris USA and the other tobacco manufacturers  
7 that have joined it from targeting youth?

8 A: Yes.

9 Q: Please turn to paragraph III(a), p. 18-19 of the MSA, Would you please explain  
10 what the purpose of this provision is?

1 A: This is the provision mandating that no tobacco company engage in advertising,  
2 marketing or promotional activity that targets youth, either directly or indirectly.

3 Q: What is the significance of this provision?

4 A: It gives the Attorneys General the opportunity to look at anything we do, including any of  
5 our marketing practices, beyond what is spelled out in the MSA. If the Attorneys General view  
6 any of our practices as either a direct or indirect targeting of youth, they can serve a thirty day  
7 notice of intent letter, go to court, obtain a court order and make us stop the particular marketing  
8 practice that is the subject of the court order.

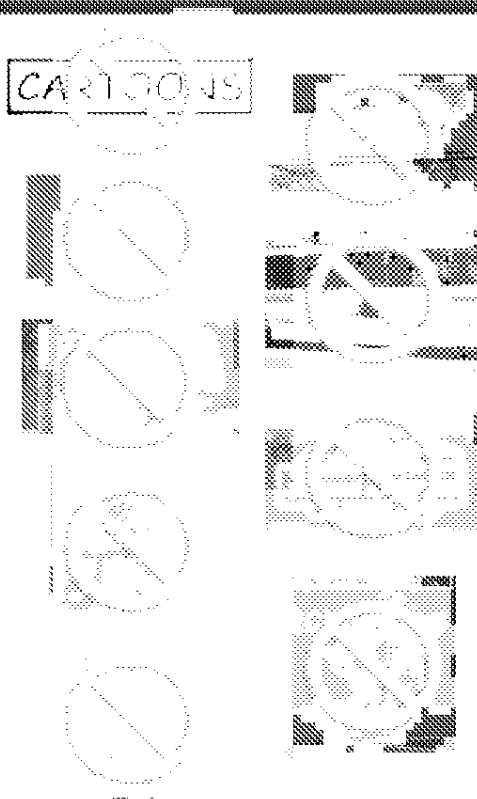
9 Q: Have you prepared a separate chart listing the different restrictions on the cigarette  
10 brand advertising and marketing activities of Philip Morris USA, as set forth in the MSA?

11 A: I have.

12 Q: Let me show you JDEM-040010, what does this chart show?

13 A: The various restrictions on Philip Morris USA's advertising and marketing activities that  
14 are required under the MSA.

## MSA Restrictions on Advertising and Marketing



No Cartoons

No Billboards

No Stadium Ads

No Transit Ads

No Paid Product Placement (e.g. TV, Movies)

No Brand Name Sponsored Concerts

No Brand Name Merchandise

Limited: One Non-Team  
Brand Name Sponsorship

Limited: Free Samples

JDEM-040010

Q: What are the purposes behind these restrictions?

A: As indicated in the preamble of the MSA, these provisions are necessary in order to further policies designed to reduce underage smoking.

Q: What is the first provision, which states "No Cartoons," referencing?

A: This provision prohibits the use of cartoons in tobacco advertising, on cigarette packages and in cigarette brand promotions.

Q: Is this a complete prohibition?

A: It is.

Q: Does the MSA define what a cartoon is?

A: Yes.

1 Q: Looking at paragraph II(1) on page 6 of the MSA, what is this?

2 A: This is the definition of a cartoon under the MSA.

3 Q: Could you please read subpart (1)(2)?

4 A: "[T]he attribution of human characteristics to animals, plants or other objects, or the  
5 similar use of anthropomorphic technique."

6 Q: Did this definition cause Philip Morris USA to discontinue any advertising  
7 campaigns?

8 A: It did.

9 Q: Let me show you what is marked as JD-055046 and JD-055047, do you recognize  
10 these advertisements?

11 A: Yes. I do.

12 Q: What are they?

13 A: They are advertisements that we discontinued because they could have been considered  
14 cartoons under the MSA.

15 Q: Would you please explain why these particular advertisements could have been  
16 considered cartoons?

17 A: The prohibition on cartoons applies to advertisements that attribute human characteristics  
18 to inanimate objects. The concern here was that these cigarettes were lounging in a manner that  
19 was consistent with human behavior.

20 Q: Was there ever any indication that this type of Philip Morris USA advertisement  
21 would ever have any appeal to underage smokers?

22 A: No, none at all.

1 Q: Turning back to your chart, JDEM-040295, point two states "No Billboards." What  
2 is this referencing?

3 A: Under the MSA, the tobacco companies are no longer permitted to advertise cigarette  
4 brands on billboards.



5  
6 Q: Is this a complete prohibition?

7 A: Yes.

8 Q: Directing your attention to paragraph III(d) on page 22 of the Master Settlement  
9 Agreement, what is this provision?

10 A: It is the provision of the MSA that imposes outdoor advertising restrictions on the  
11 tobacco companies.

1 Q: Does the MSA define "outdoor advertising"?

2 A: Yes.

3 Q: How is "Outdoor Advertising" defined?

4 A: "Outdoor Advertising" means (1) billboards, (2) signs and placards in arenas, stadiums,  
5 shopping malls and Video Game Arcades (whether any of the foregoing are open air or  
6 enclosed)(but not including any such sign or placard located in an Adult-Only Facility), and (3)  
7 any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing  
8 outward."

9 Q: Was outdoor advertising something that was a primary part of Philip Morris USA's  
10 advertising and marketing activities?

11 A: Yes. Prior to the MSA a significant part of our advertising and marketing budget was  
12 devoted to advertising on billboards.

13 Q: Did Philip Morris USA have its billboard advertising removed?

14 A: Yes.

15 Q: Who owns the billboards?

16 A: They are owned by companies that specialize in outdoor ads and billboards.

17 Q: How would Philip Morris USA advertise on billboards if you did not own them?

18 A: We had to lease the space from the owner of the billboard.

19 Q: What happened to the paid-for billboard space that was left remaining under the  
20 lease agreements?

21 A: The MSA included a provision that required us to make that space, assuming the states  
22 wanted it, available for anti-smoking messages and youth smoking prevention messages.

23 Q: How many billboards were made available to the states?



1 A: Approximately 1,900.

2 Q: Did the states take you up on your offer to provide alternative advertising space?

3 A: In some instances yes.

4 Q: Did the anti-smoking and youth smoking prevention ads run on billboards?

5 A: Yes.

6 Q: Showing you JD-055043, do you recognize these documents?

7 A: Yes. These are examples of the alternative billboard advertising that replaced our Philip

8 Morris USA advertising.

9 Q: Turning back to your chart, point three states -- "No Stadium Ads." What is this

10 referencing?

11 A: It refers to product advertisements placed in sporting arenas.

12 Q: Turning back to your chart, the fourth bullet point states "No transit

13 advertisements." What is a transit advertisement?

14 A: A transit advertisement is an ad that is affixed to things such as taxis, buses, subways and

15 bus stops.

16 Q: What does the MSA provide regarding transit ads?

17 A: It prohibits them.

18 Q: Did Philip Morris USA ever use transit advertising?

19 A: Yes.

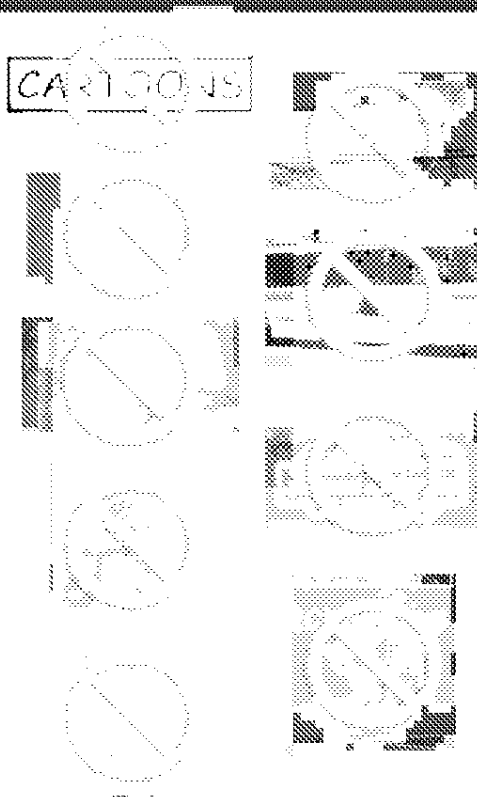
20 Q: Let me return to the marketing restriction chart -- and go to item five, "No Paid

21 Product Placement." What does this provision govern?

22 A: This refers to paying producers of movies or TV shows to place cigarettes for ads in their

23 production.

## MSA Restrictions on Advertising and Marketing



No Cartoons

No Billboards

No Stadium Ads

No Transit Ads

No Paid Product Placement (e.g. TV, Movies)

No Brand Name Sponsored Concerts

No Brand Name Merchandise

Limited: One Non-Team  
Brand Name Sponsorship

Limited: Free Samples

JDEM-040010

Q: Is this prohibited under the MSA?

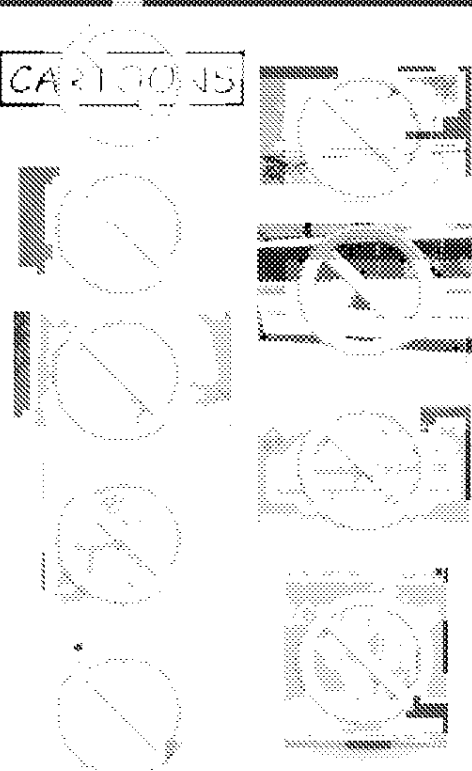
A: Yes.

Q: Has Philip Morris USA engaged in any product placement since you have been with the company?

A: The company had a policy in place when I joined it that prohibited paid product placement or providing product for placement in movies and television shows so I do not believe that we engaged in this practice in the time I have been with the company. I know there have been none since the time I have been CEO. We have actively lobbied the entertainment industry to refrain from showing our brands in any movies and TV shows, but ultimately we have no basis to legally challenge the typical use of cigarette brands in television shows or movies.

- 1 Q: Turning back to our chart, bullet point six states "No Brand Name Sponsored  
2 Concerts" -- could you please explain that provision?  
3 A: The MSA prohibits engaging in brand name sponsorships that are in the form of a concert  
4 or musical festival, unless the event is held at an adult-only facility.

**MSA Restrictions on Advertising and Marketing**



- No Cartoons
- No Billboards
- No Stadium Ads
- No Transit Ads
- No Paid Product Placement (e.g. TV, Movies)
- No Brand Name Sponsored Concerts
- No Brand Name Merchandise
- Limited: One Non-Team Brand Name Sponsorship
- Limited: Free Samples

JDEM-040010

- 5  
6 Q: Did Philip Morris USA's brands sponsor such concerts?  
7 A: Yes.  
8 Q: But you no longer do so?  
9 A: That is correct. The MSA prohibits that practice.  
10 Q: Let me return to your chart, and call your attention to point seven -- "No Brand  
11 Name Merchandise." What is this provision?

1 A: This provision prohibits the distribution of branded merchandise

2 Q: What is branded merchandise?

3 A: This refers to merchandise such as a sweatshirt, cap, t-shirt, bag or flashlight that has the

4 brand name or logo of a cigarette brand.

5 Q: Was branded merchandise used within Philip Morris USA's marketing program?

6 A: Yes.

7 Q: How has the MSA affected Philip Morris USA's ability to distribute branded

8 merchandise?

9 A: As a result of the MSA, Philip Morris USA does not sell or distribute or give away any

10 merchandise to consumers that has any cigarette brand name or logo on it.

11 Q: Does Philip Morris USA authorize anyone else to do this on your behalf?

12 A: No.

13 Q: So, is it possible to buy or obtain today a Marlboro hat or t-shirt or duffel bag from

14 Philip Morris USA?

15 A: No.

16 Q: Does Philip Morris USA distribute any hats, or t-shirts, or duffel bags to

17 consumers?

18 A: Yes, we do -- but none of the items have any cigarette brand names on them.

19 Q: Let's use duffel bags as an example. What does a duffel bag that Philip Morris USA

20 distributes look like?

21 A: It is just a plain duffel bag. It does not have the name the company name or the name of

22 any brand of cigarettes on it.

23 Q: How does someone obtain items like duffel bags from Philip Morris USA?

1 A: We have what is called a continuity program. Our adult smokers collect what we call  
2 Marlboro Miles from the sides of the packs of cigarettes. Each pack of cigarettes has five miles  
3 on it. When someone collects enough miles he or she can redeem them for items, such as the  
4 duffel bag we have just discussed.

5 Q: Can any smoker who collects enough Marlboro Miles obtain items from Philip  
6 Morris USA?

7 A: No. The MSA provides that you cannot give any item or premium to someone who is  
8 underage. For example, if you have a redemption program where a consumer sends in 20 proofs  
9 of purchase in exchange for a pair of sunglasses, then we have to validate that person's age by a  
10 Government Issued Identification.

11 Q: How old does someone have to be to receive a promotional gift from Philip Morris  
12 USA?

13 A: The person has to be at least 21 years old.

14 Q: Is that what is required under the MSA?

15 A: No, under the MSA we are only required to verify that the person is of legal age. Our  
16 procedures have a cushion built in.

17 Q: Just to be clear, the promotional gifts we are talking about are not brand name  
18 merchandise, correct?

19 A: That is correct, they are not branded merchandise.

20 Q: Let me move to the last bullet point on the advertising restriction chart "Limited:  
21 One Non-Team Brand Name Sponsorship." Has Philip Morris USA engaged in tobacco  
22 brand sponsorships over the years?

23 A: That's correct.

1 Q: Would you please give some examples?

2 A: Some examples would include Marlboro Championship Auto Racing, Virginia Slims  
3 Tennis Tournaments, Benson and Hedges Jazz Festivals, Marlboro Country Music and Merit  
4 Bowling.

5 Q: Let's review paragraph III(c)(2) on page 19 of the MSA. Could you please explain  
6 this provision?

7 A: Philip Morris USA is allowed to engage in one brand named sponsorship in the United  
8 States other than in an adult-only facility during any 12 month period, provided it is not a  
9 concert, it does not have an audience comprised of a significant percentage of youth, it does not  
10 involve paid participants who are youth and it is not an athletic event between opposing teams in  
11 any football, basketball, baseball, soccer or hockey league.

12 Q: What has happened as a result of this provision?

13 A: We have eliminated all tobacco brand sponsorships except for one.

14 Q: Which sponsorship did Philip Morris USA choose to keep?

15 A: Its sponsorship of Marlboro Team Penske Racing.

16 Q: Could you explain the racing sponsorship?

17 A: We sponsor a racing team that participates in the Indy Racing League, or IRL, racing  
18 events.

19 Q: Is that the only brand named sponsorship that Philip Morris USA has as of today?

20 A: That is correct.

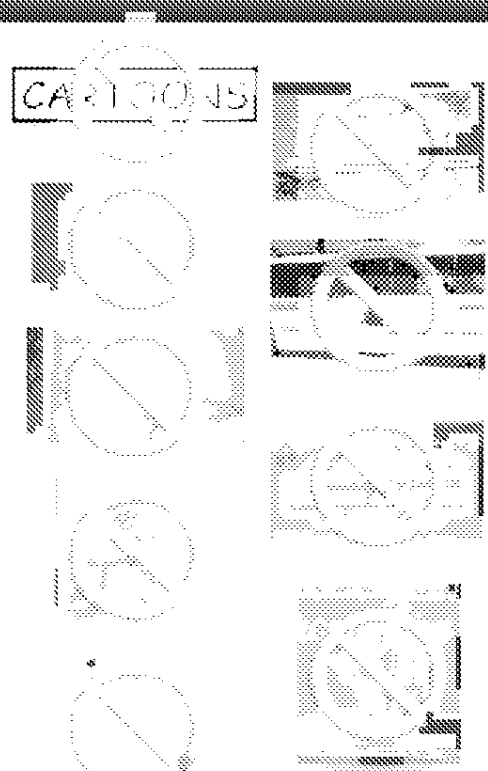
21 Q: So all the others you have listed are prohibited under the MSA, correct?

22 A: Yes.

1 Q: The last bullet point on your chart states, "Limited: Free Samples," what does this  
2 reference?

3 A: Under the MSA we are banned from providing free samples of cigarette brands other than  
4 in adult-only facilities.

**MSA Restrictions on Advertising and Marketing**



- No Cartoons
- No Billboards
- No Stadium Ads
- No Transit Ads
- No Paid Product Placement (e.g. TV, Movies)
- No Brand Name Sponsored Concerts
- No Brand Name Merchandise
- Limited: One Non-Team Brand Name Sponsorship
- Limited: Free Samples

JDEM-040010

5  
6 Q: Does Philip Morris USA abide by this provision?

7 A: Yes.

8 B. PHILIP MORRIS USA'S MARKETING PRACTICES HAVE GONE  
9 BEYOND THE REQUIREMENTS OF THE MSA

10 Q: Do Philip Morris USA's advertising and marketing policies go beyond the  
11 requirements of the MSA?

12 A: Yes.

1 Q: Why?

2 A: As CEO of the company I have a legal responsibility to act in the best interests of the  
3 company. That requires looking at the views of many stakeholders and making the decisions that  
4 I believe will advance our Mission. In some cases we believed that changing our advertising and  
5 marketing policies beyond what was required under the MSA would be in the best interest of the  
6 company long term.

7 Q: Can you provide an example?

8 A: In recent years, we have had discussions regarding whether or not it would be responsible  
9 to withdraw our cigarette advertisements from magazines in order to reduce cigarette advertising  
10 visibility to under-age people. The company has been moving toward marketing with the  
11 consumer directly through promotions and our Adult Smoker Database. We also believed that  
12 scaling back, and eventually eliminating, cigarette advertisements in magazines, was consistent  
13 with our Mission and Values and had been working with the Attorneys General on developing  
14 appropriate readership measurement tools. As a result of these discussions, we ultimately  
15 changed our media placement policy around June of 2000.

16 Q: We spoke earlier about stakeholders, are the Attorneys General stakeholders?

17 A: Yes.

18 Q: Do they give you feedback regarding your business practices?

19 A: Yes.

20 Q: How do they give you feedback?

21 A: Through meetings with them. We also communicate with the Attorneys General on a  
22 regular basis both in writing and over the phone. The Attorneys General all belong to the  
23 National Association of Attorneys General, or NAAG. NAAG is an organization that allows the



1 Attorneys General to communicate with one another regarding issues that are common to the  
2 states. There is a provision of the Master Settlement Agreement that gives certain powers to the  
3 National Association of Attorneys General to monitor the performance of the tobacco companies  
4 under the terms of the Master Settlement Agreement. After the agreement was signed, NAAG  
5 set up an enforcement committee for that purpose.

6 Q: Later on I will ask you some questions about the finer details regarding how you  
7 have interacted with the Attorneys General in complying with the MSA, how they have  
8 monitored Philip Morris USA's compliance with the MSA and what the MSA requires.  
9 But for now, I want to discuss some examples that illustrate Philip Morris USA's current  
10 advertising and marketing practices. Do you recall participating in a meeting with certain  
11 Attorneys General in December 1999?

12 A: I think it was about December of 1999.

13 Q: Where did the meeting take place?

14 A: At Philip Morris USA's offices.

15 Q: Who attended the December meeting on behalf of the Attorneys General?

16 A: Christine Gregoire of Washington State; Mike Fisher of Pennsylvania; and  
17 representatives of the Attorney General offices of New York, California and Ohio.

18 Q: Which Philip Morris USA representatives attended the meeting?

19 A: I attended along with my Senior Vice President of Marketing, my Senior Vice President  
20 of Youth Smoking Prevention; my Senior Vice President of Sales; my General Counsel and other  
21 representatives from our marketing organization.

22 Q: Who set the agenda?

23 A: The Attorneys General determined the agenda of the meeting.

1 Q: How long did the meeting last?

2 A: It started late in the morning and lasted until the middle of the afternoon - probably three  
3 to four hours.

4 Q: Would you please explain generally what topics were discussed in the meeting?

5 A: We talked about our Youth Smoking Prevention Program and our Mission and Core  
6 Values. We also discussed our print advertising and magazine advertising policy. We also  
7 talked about our Bar Program. The Attorneys General raised some questions regarding Philip  
8 Morris USA's magazine advertising policy, how Philip Morris USA determines what magazines  
9 in which to place Philip Morris USA cigarette brand advertising and Philip Morris USA's  
10 cigarette brand advertisements on the back covers of magazines.

11 Q: I would like to discuss the issue you just raised regarding back cover advertising.  
12 Does Philip Morris USA advertise its cigarette brands on the back covers of magazines?

13 A: No.

14 Q: What did the Attorneys General say during the December 1999 meeting regarding  
15 cigarette brand advertising on the back covers of magazines?

16 A: The Attorneys General wondered if cigarette brand advertising on back covers of  
17 magazines might be too visible to kids. A back cover of a magazine has the potential to show up  
18 in a dentist's office or on a coffee table where it would be visible to youth.

19 Q: What did you do when the Attorneys General asked about your back cover ads?

20 A: We ended the discussion with my promise that Philip Morris USA would review the  
21 matter and see if there was any action we should take.

22 Q: What did you do next?

1 A: After the December, 1999 meeting with the Attorneys General, I had some discussions  
2 with members of my senior management staff regarding whether Philip Morris USA cigarette  
3 brand advertising on the back covers of magazines could be too visible to young people. After  
4 discussing the issue, we thought it was a good idea to discontinue all back cover advertising for  
5 our cigarette brands. So we did.

6 Q: Did you discontinue back cover advertising of your cigarette brands in all  
7 magazines?

8 A: Yes.

9 Q: When was this decision made?

10 A: April of 2000.

11 Q: Did you advise the Attorneys General of this decision?

12 A: Yes.

13 Q: Are there any terms or provisions of the Master Settlement Agreement that  
14 preclude Philip Morris USA from advertising cigarette brands on the back covers of  
15 magazines?

16 A: There are no such provisions.

17 Q: Are there any laws or regulations that preclude Philip Morris USA from placing  
18 cigarette brand advertisements on the back covers of magazines?

19 A: There are not.

20 Q: Showing you JD-048190, are you familiar with this document?

21 A: Yes I am.

22 Q: Could you please identify the document.

1 A: It is a letter I wrote to Attorney General Gregoire summarizing some of the topics  
2 discussed at our December meeting and informing her that Philip Morris USA decided to remove  
3 cigarette brand advertisements from the back covers of magazines.

4 Q: Is this your signature?

5 A: Yes it is.

6 Q: What did Philip Morris USA do if it had already paid for or contracted to take  
7 cigarette brand advertising out on a back cover?

8 A: Where we could, we inserted youth smoking prevention advertisements in place of our  
9 cigarette brand advertisements.

10 Q: Showing you JD-055044, do you recognize this document?

11 A: Yes.

12 Q: What is this document?

13 A: It is an example of the type of advertisement that was placed on the back cover of our  
14 magazines after we had the back cover cigarette brand advertising removed.

15 Q: And these back cover cigarette ads are gone forever?

16 A: That is correct.

17 Q: You also testified that you discussed magazine readership at the December 1999  
18 meeting. What was the discussion?

19 A: There was some discussion about questions the Attorneys General had regarding the  
20 visibility of our cigarette brand advertisements and whether we should change the way we  
21 evaluate the magazines in which we advertise our cigarette brands.

22 Q: What was Philip Morris USA's media placement policy at that time?

1 A: We only placed cigarette brand advertisements in magazines that had circulation data  
2 which showed that no more than 15 percent of the people buying the magazine were under 21.  
3 Q: Did the Attorneys General suggest that you change your policy?  
4 A: Yes.  
5 Q: How did the Attorneys General suggest that you change your policy?  
6 A: They believed we ought to consider using readership data instead of circulation data.  
7 Q: Please explain what "circulation data" is.  
8 A: Circulation data tracks the people who purchase a magazine.  
9 Q: Would you please explain what "readership data" is?  
10 A: Readership data tracks the people who actually read the magazine, in addition to those  
11 who purchase it. For example, readership data would calculate the age ranges of all potential  
12 readers of a magazine in a dentist's office, not just the age of the person who purchased it.  
13 Q: What was your response when the Attorneys General raised this issue?  
14 A: We told the Attorneys General that we would look into it.  
15 Q: What did Philip Morris USA do after the December 1999 meeting with the  
16 Attorneys General?  
17 A: We did a review of the "readership data" question regarding the placement of Philip  
18 Morris USA cigarette brand advertising in magazines.  
19 Q: Showing you JD-042590, are you familiar with this document?  
20 A: Yes  
21 Q: What is it?  
22 A: This is a letter I sent to Attorney General Gregoire following our meeting in December of  
23 1999.

1 Q: Is this your signature on the letter?

2 A: Yes.

3 Q: Could you please read the first full paragraph on the second page?

4 A: "We're going to give readership another look, although I am not optimistic that these data  
5 have the statistical validity we require. Ultimately, we may need to explore our own research  
6 methodology to advance this issue. In the meantime, we'll look again at the principles we're  
7 using to make sure we're comfortable. Again, our objective is to appropriately lower the profile  
8 of cigarette advertising to reduce it as a societal factor as described by the Surgeon General's  
9 Report while preserving our right to communicate with adult smokers."

10 Q: In that paragraph you state that readership may not have the statistical validity that  
11 you require. What was your concern?

12 A: We had two concerns regarding the statistical services that gathered readership data at the  
13 time. First, the magazines they covered totaled about 54 and they did not match up well to the  
14 magazines in which we ran our ads. I believe they tracked less than one-third of the magazines  
15 in which we advertised. Second, the services did not provide all the information necessary for us  
16 to measure accurately the readership for people below the age of 21.

17 Q: What did Philip Morris USA decide to do as a result of the review of its magazine  
18 cigarette brand media placement policy and this "readership data" question?

19 A: We thought that we should work with the Attorneys General to sponsor the development  
20 of a competent and reliable youth readership survey methodology which could then be used by  
21 the tobacco industry in determining the magazines in which we should advertise. However, in  
22 the interim we decided to suspend all cigarette advertising in any publication where 15 percent of  
23 the readers were below the age of 18 years or where the magazines had more than 2 million

1 readers below the age of 18. This was the criteria that had been promulgated by the FDA in  
2 1996.

3 Q: Did you inform the Attorneys General of your decision?

4 A: Yes, I wrote a letter to Attorney General Christine Gregoire and advised her of our  
5 decision.

6 Q: Showing you JD-041075, do you recognize this document?

7 A: Yes.

8 Q: What is this document?

9 A: It is the letter I sent to Attorney General Gregoire on June 2, 2000 informing her that we  
10 were going to suspend placement of cigarette brand advertisements in certain magazines.

11 Q: Let me direct your attention to the second paragraph of page two, could you please  
12 read the second sentence of that paragraph?

13 A: "We have decided to take further actions while we work toward developing a more  
14 reliable methodology."

15 Q: Does that refer to a more reliable readership methodology than you expressed  
16 concern with?

17 A: Yes.

18 Q: Please continue reading that paragraph.

19 A: "We will suspend placing cigarette advertising in any publication whose readers younger  
20 than 18 years of age constitute 15% or more of the total readership of the magazine or that is  
21 read by more than 2 million persons younger than 18 years of age, as measured by MRI,  
22 Simmons or other competent and reliable readership survey evidence. This was the standard for  
23 defining adult publications set forth in the tobacco rule promulgated by the FDA. We will

1 continue to rely on circulation or subscriber data for publications not currently measured by the  
2 applicable MRI or Simmons youth readership surveys or other competent and reliable readership  
3 surveys. A list of magazines as to which Philip Morris USA is suspending placement of  
4 cigarette advertising is attached."

5 Q: Is there an attachment to this document?

6 A: Yes.

7 Q: What is the attachment?

8 A: It is a listing of the magazines in which Philip Morris USA had suspended placing any  
9 cigarette brand advertising.

10 Q: One of the magazines on the list is Better Homes and Garden, right?

11 A: Yes.

12 Q: Do kids read Better Homes and Gardens?

13 A: Well, the readership data says that they do. If you are going to set a standard you need to  
14 apply it. I personally do not view it as a publication youth read and the circulation data does not  
15 indicate that. But because the readership data does indicate that, we discontinued our cigarette  
16 brand advertising in that magazine.

17 Q: So the magazines on the list are all magazines where the readership data indicated  
18 that they are read by two million persons younger than 18 years of age or where the  
19 readers younger than 18 years of age constitute 15 percent or more of the total readership?

20 A: That is correct.

21 Q: When did Philip Morris USA discontinue cigarette brand advertising in these  
22 magazines?

23 A: September 2000.



1 Q: In the years prior to 2000, had Philip Morris USA placed advertising for its  
2 cigarette brands in these magazines on a regular basis?

3 A: Yes.

4 Q: Did the publisher of each of these magazines that are on this list provide Philip  
5 Morris USA with subscriber and circulation data that indicated that less than 15 percent of  
6 the people buying these magazines were under the age of 21?

7 A: That's correct.

8 Q: What would that information have told you?

9 A: That these magazines are not targeted to a youthful audience.

10 Q: However, Philip Morris USA still suspended cigarette advertising in these  
11 magazines after discussing this with the Attorneys General and analyzing the issue?

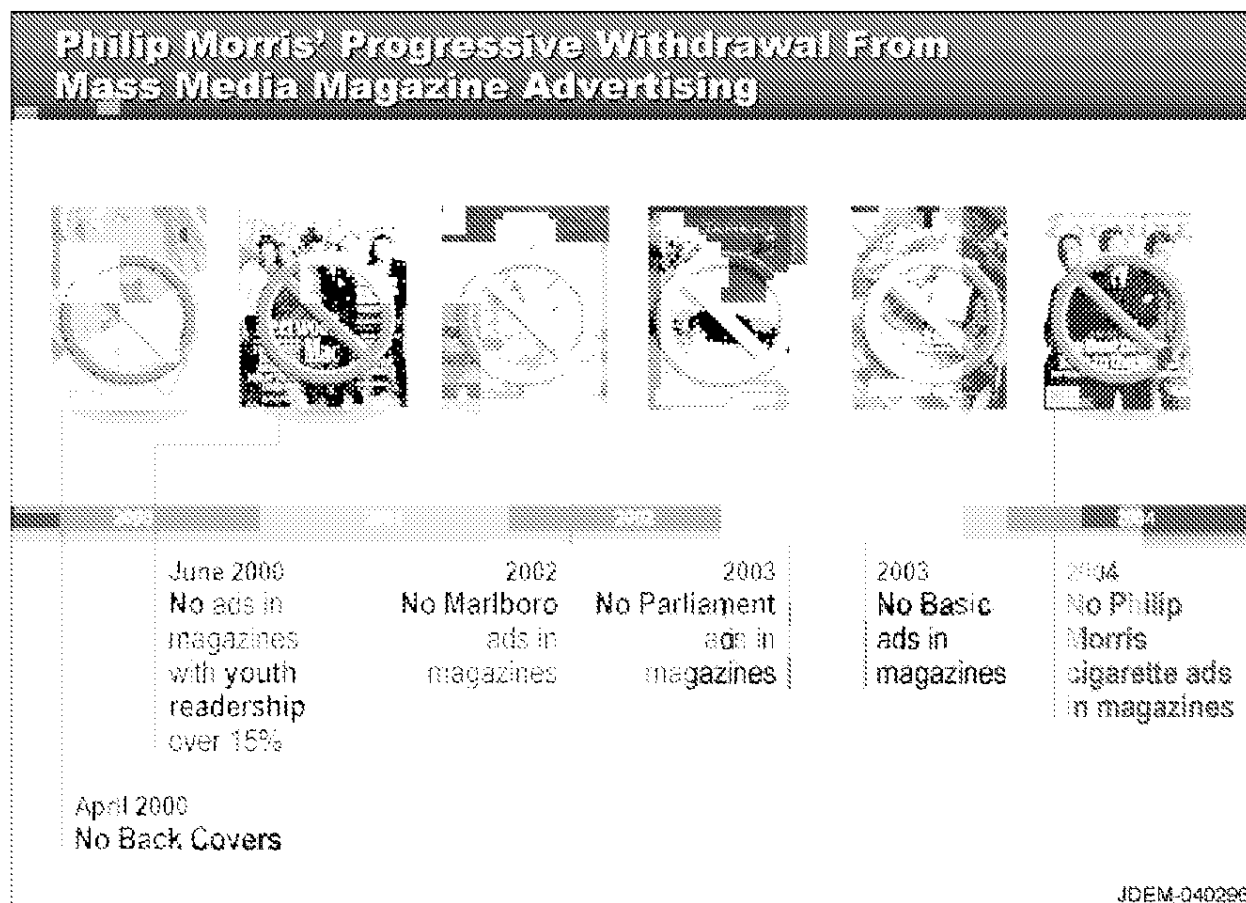
12 A: Yes. That's correct.

13 Q: After you informed the Attorneys General that you would be applying readership  
14 data as a criteria for media placement did you do anything else?

15 A: Simmons and MRI expanded their services somewhat. But if a national magazine was  
16 not covered by Simmons or MRI we would review the national magazine to assess whether the  
17 content of it might be similar to a national magazine whose readership fell below the 85%  
18 standard. Then we decided to simply not advertise in any magazines that were not covered by  
19 either Simmons or MRI. And eventually Philip Morris USA pulled its cigarette brand  
20 advertising out of all magazines, which is where we stand today.

21 Q: Mr. Szymanczyk, showing you JDEM-040296 , could you please describe this  
22 document?

A: Yes, it is a chart I prepared describing the major steps that Philip Morris USA has made in withdrawing from all mass media magazine advertising. The events described on this chart represent Philip Morris USA's efforts to reduce the visibility of mass media cigarette advertising to underage people. After the MSA, magazines represented the last major form of mass media advertising for cigarette brands.



Q: What is a mass media magazine?

A: It is a magazine that is broadly available to the public, either by subscription or on newsstands.

Q: Looking at the first item, "No Back Covers," does this describe the back cover ads we just discussed?

1 A: Yes it does.

2 Q: Looking at the second item, "No Ads in Magazines With Youth Readership Over  
3 15%," does this characterize the change in your media placement policy that we just  
4 discussed?

5 A: Yes.


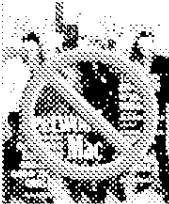



6 Q: How many magazines were eligible to run Philip Morris USA cigarette brand  
7 advertisements after you suspended advertising in these magazines?

8 A: Our media list was less than two dozen.

9 Q: Moving back to JDEM-040296, could you please read the third item.

10 A: "2002 - No Marlboro Ads in Magazines"

**Philip Morris' Progressive Withdrawal From Mass Media Magazine Advertising**

					
June 2000 No ads in magazines with youth readership over 15%	2002 No Marlboro ads in magazines	2003 No Parliament ads in magazines	2003 No Basic ads in magazines	2004 No Philip Morris cigarette ads in magazines	
April 2000 No Back Covers					

JDEM-040296

11

1 Q: What does that mean?

2 A: Exactly what it says. In 2002, Philip Morris USA decided to stop running advertisements  
3 for Marlboro in magazines. By the beginning of 2003 Philip Morris USA had stopped running  
4 all of its Marlboro ads in magazines.

5 Q: Did the MSA require Philip Morris USA to discontinue its Marlboro advertising in  
6 magazines?

7 A: No, we did that voluntarily.

8 Q: Were there any laws that required that Philip Morris USA cease to advertising  
9 Marlboro in magazines?

10 A: No.

11 Q: Looking at the second to last item on this chart "2004 - No Philip Morris USA  
12 Cigarette Ads in Magazines," what does this mean?

13 A: Exactly what it says. In 2004, Philip Morris USA stopped running cigarette brand  
14 advertising, for any of its brands, in any magazines.

15 Q: Philip Morris USA is not advertising brands cigarettes in any mass media  
16 magazines?

17 A: No, not one.

18 Q: Did the MSA require Philip Morris USA to withdraw all of its cigarette brand  
19 advertisements from magazines?

20 A: No.

21 Q: Are there any laws that required Philip Morris USA to withdraw all of its cigarette  
22 brand advertisements from magazines?

23 A: No.

1 Q: If Philip Morris USA wanted to advertise cigarette brands in magazines, could it do  
2 so?

3 A: Sure. However, Philip Morris USA does not have any plans to run cigarette brand  
4 advertising in magazines.

5 Q: After the MSA, were magazines the only form of mass media advertising left  
6 available for Philip Morris to use in advertising its cigarettes?

7 A: Yes.

8 Q: Why did Philip Morris USA eliminate its cigarette brand advertising in magazines?

9 A: It was consistent with the direction that we had been taking relative to our Mission. We  
10 wanted to be responsive to the public health community's concerns regarding the impact of  
11 cigarette advertising on youth smoking. During this period, we developed ways to communicate  
12 with adult smokers so we could reduce mass market advertising. Ultimately, we eliminated all  
13 our magazine advertising.

14 Q: Does that mean that Philip Morris USA is not advertising its cigarette brands at all?

15 A: No, we still advertise our cigarette brands to adult smokers on our database through direct  
16 mailings and we use some brand name signage in retail stores and in adult-only facilities during  
17 events.

18 Q: Do you believe the evolution of Philip Morris USA's cigarette brand advertising  
19 policies is a good example of Philip Morris USA working to align with society by working  
20 with stakeholders such as the Attorneys General?

21 A: I do. These are examples of good thoughtful work by our employees to carry out our  
22 Mission.

1 Q: In 2001 did Philip Morris USA have any dialogue with the Attorneys General  
2 concerning Philip Morris USA's racing sponsorship?

3 A: Yes.

4 Q: Could you explain what happened?

5 A: In the Spring of 2001, Attorney General Gregoire called me on behalf of the Attorneys  
6 General to express concerns about our sponsorship of Marlboro Team Penske in the Indianapolis  
7 500. They believed that our participation in the Indianapolis 500 might violate the MSA.

8 Q: What was their concern?

9 A: Under the MSA we are limited to one brand name sponsorship per twelve month period.  
10 At the time, Philip Morris USA's elected sponsorship was Marlboro Team Penske. Team Penske  
11 raced in events sanctioned by the Championship Auto Racing Teams, Inc., otherwise known as  
12 "CART." That year CART sanctioned the participation of its teams in the Indianapolis 500,  
13 which is an Indy Racing League event. Marlboro Team Penske elected to participate. The  
14 Attorneys General believed that if the team was allowed to race in the Indy 500, that would  
15 constitute racing in a second series and violate the MSA's restriction of only one brand name  
16 sponsorship in a twelve-month period.

17 Q: Did Philip Morris USA believe that participating in the Indianapolis 500 violated  
18 the MSA?

19 A: No.

20 Q: Why not?

21 A: Under the MSA we are entitled to one brand name sponsorship, but are allowed to  
22 participate in all events that are sanctioned by a single approving organization, in this case  
23 CART. Because CART sanctioned the participation of its teams in the Indianapolis 500, Team

1   Penske's participation would not have violated the MSA. In addition, after analysis, my staff  
2   concluded that the team could participate in the Indianapolis 500 in a manner that would meet all  
3   MSA requirements.

4   Q:     Did Philip Morris USA do anything to address the concerns raised regarding  
5   Marlboro Team Penske's participation in the Indianapolis 500?

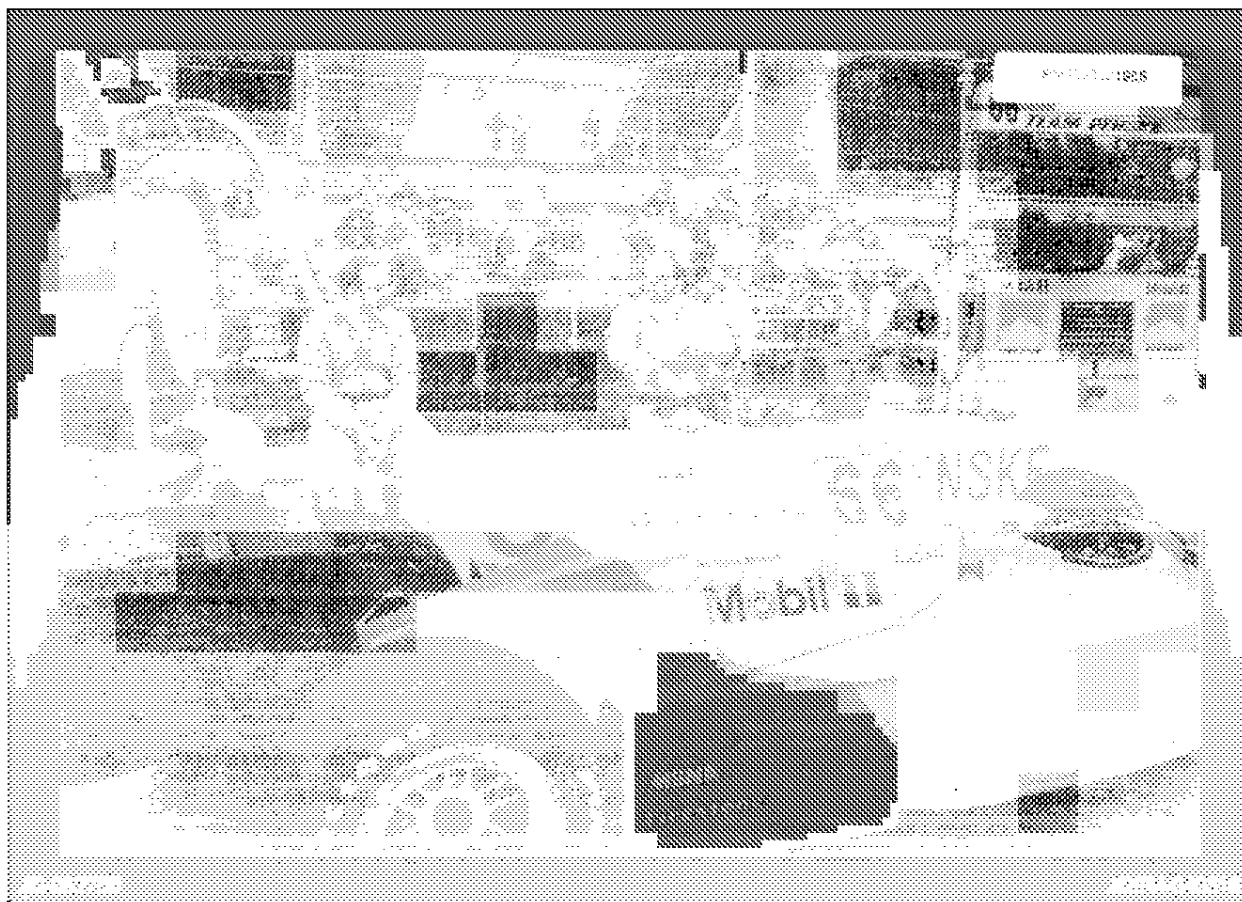
6   A:     Yes.

7   Q:     What did Philip Morris USA do?

8   A:     To avoid any controversy on the number of sponsorships that year, we voluntarily  
9   removed the Marlboro brand name entirely from the racing cars and eliminated Marlboro brand  
10   signage at the Indianapolis 500 that year.

11   Q:     Let me show you JDEM-040316, what is this?

12   A:     This is a photograph of the Marlboro Team Penske car that ran in the Indianapolis 500 in  
13   2001 after we made the major adjustment discussed above. As you can see, the Marlboro brand  
14   name was completely removed from the racing car.



1  
2 Q: Were the Attorneys General satisfied with the actions Philip Morris USA took?

3 A: Yes. I followed up with Attorney General Gregoire in advance of the race and she  
4 indicated that our actions would be satisfactory. In addition, a representative of the Indiana  
5 Attorney General attended the race in order to monitor our compliance.

6 Q: Let me show you JD-052815, are you familiar with this document?

7 A: Yes.

8 Q: What is this document?

9 A: It is a Philip Morris USA Press release regarding our participation in the Indianapolis  
10 500.

11 Q: Could you please read the second paragraph?



1 A: "While the company believes its sponsorship of Marlboro Team Penske at the  
2 Indianapolis 500 Mile Race is consistent with the letter and spirit of the Master Settlement  
3 Agreement (MSA), this move is evidence of Philip Morris USA U.S.A.'s desire to work  
4 constructively with the Attorneys General to resolve issues of interpretation."

5 Q: If Philip Morris USA did not believe it was violating the MSA, then why did it take  
6 these actions?

7 A: When the Attorneys General raised this issue, our reaction was to work collaboratively to  
8 resolve it. Although we believed that Marlboro Team Penske's participation and our signage at  
9 the race was fully compliant with the MSA, we felt minimizing our visibility was both consistent  
10 with our Mission and Values and would continue to show the Attorneys General that we were  
11 willing to work with them on these issues.

12 Q: How long did Philip Morris USA have to minimize its visibility?

13 A: The race was on a Sunday. We had a short period of time in which to make major  
14 changes to accommodate the concerns of the Attorneys General. Philip Morris USA personnel  
15 and Team Penske personnel worked virtually around the clock, and were able to make all  
16 required changes by the day of the race.

17 Q: Does Marlboro Team Penske still participate in CART racing?

18 A: No.

19 Q: What does it participate in?

20 A: In late 2001, Philip Morris USA and Penske jointly decided it was in the best interests of  
21 Marlboro Team Penske to move to the Indy Racing League.

22 Q: Why did Team Penske switch?

1 A: We made this decision for two reasons. First, we had concerns about the ongoing  
2 viability of the CART series. Second, the strategic plans and direction of the CART series were  
3 too divergent from those of Philip Morris USA. For example, CART was looking to increase the  
4 number of races it had outside the United States, but because we are a domestic tobacco  
5 company we were not interested in participating in international races.

6 Q: Has Philip Morris USA done anything else to reduce its visibility at the racetrack?

7 A: Yes

8 Q: What are some of the other measures you have taken?

9 A: Since May of 2001, we have substantially reduced Marlboro's visibility at the tracks.

10 Q: Were any of these measures that Philip Morris USA implemented required under  
11 the MSA?

12 A: No.

13 Q: Then why did you implement them?

14 A: We felt that these measures were consistent with the objectives we set for ourselves in  
15 our overall Mission and Values and the concept of reducing the profile of cigarette advertising.

16 Q: Are there any other steps that Philip Morris USA has taken to ensure that its racing  
17 sponsorship is run in accordance with the MSA?

18 A: The races are quite involved from a logistical standpoint. As an overlay to all of the  
19 usual logistical requirements for each race, we have an extensive set of compliance checks. We  
20 audit the activities at each race.

21 Q: What steps does Philip Morris USA take to make sure that the outside vendors you  
22 work with on racing are following the requirements of the MSA?

1 A: Wherever possible, we build the relevant MSA requirements into all of our racing  
2 contracts. In addition, we conduct training with our vendors.

3 Q: So in sum, how would you characterize Philip Morris USA's compliance with the  
4 sponsorship provisions of the MSA?

5 A: I think we have gone well beyond the text of the MSA, as well as respecting the spirit of  
6 the MSA and the concerns raised by the Attorneys General.

7 V. PHILIP MORRIS USA ENGAGES IN RESPONSIBLE RETAILING PRACTICES  
8 THROUGH THE RETAIL LEADERS PROGRAM

9 Q: I now want to focus on Philip Morris USA's current retailing practices. Before we  
10 get into Philip Morris USA's interaction with wholesalers and retailers of cigarettes, how  
11 does Philip Morris USA use the term "retail" ?

12 A: Retail represents the place where cigarettes are available for adult smokers to purchase if  
13 they choose to do so. A typical retail venue would be a convenience store.

14 Q: Does Philip Morris USA sell its cigarettes directly to consumers at retail?

15 A: No. Philip Morris USA sells cigarettes to wholesalers. Wholesalers then sell to retailers.  
16 For a small number of large retailers who have their own distribution systems, we sell directly to  
17 the retailer.

18 Q: Does Philip Morris USA dictate how cigarettes are sold at retail?

19 A: No. Retailers make the decisions about where and how they will sell cigarettes. We have  
20 some influence over some retailers through the promotions and trade merchandising programs  
21 we offer and through our sales force that calls on many retail accounts and has established  
22 relationships.

23 Q: How does Philip Morris USA influence retailer merchandising practices?

1 A: We offer retailers promotions and payment programs that provide retailers with  
2 incentives to merchandise Philip Morris USA's products.

3 Q: What is the current retail trade program that Philip Morris USA has in place?

4 A: Retail Leaders.

5 Q: When did Philip Morris begin its Retail Leaders merchandising program?

6 A: 1998.

7 A. THE FEATURES OF RETAIL LEADERS

8 Q: What are the features of Retail Leaders?

9 A: Retail Leaders provides progressive financial incentives to merchandise our cigarettes in  
10 a way that helps build adult smoker market share of our brands while reducing underage  
11 cigarette sales. The program offers retailers progressively higher financial incentives if they  
12 consolidate the cigarette category in a single location in the store and consolidate cigarette brand  
13 signage to that location so cigarettes will be less visible to minors in the store. Further, it  
14 requires non-self service merchandising and encourages, through the use of financial incentives,  
15 the removal of cigarette displays from the counter in the store so cigarettes will be less accessible  
16 and visible to minors. The program also provides financial incentives to retailers for taking  
17 certain other actions to prevent youth smoking and punishes retailers who are found to have sold  
18 cigarettes to minors. It also incents retailers to operate within the boundaries of the MSA, even  
19 though they are not parties to the MSA.

20 Q: When you say financial incentives, what are you talking about?

21 A: Money. Retail Leaders participants are paid a per carton payment for any Philip Morris  
22 USA carton sold, subject to a limit. That sum increases as retailers do more to merchandise our  
23 brands and do more to limit youth access and visibility. The better job the retailer does

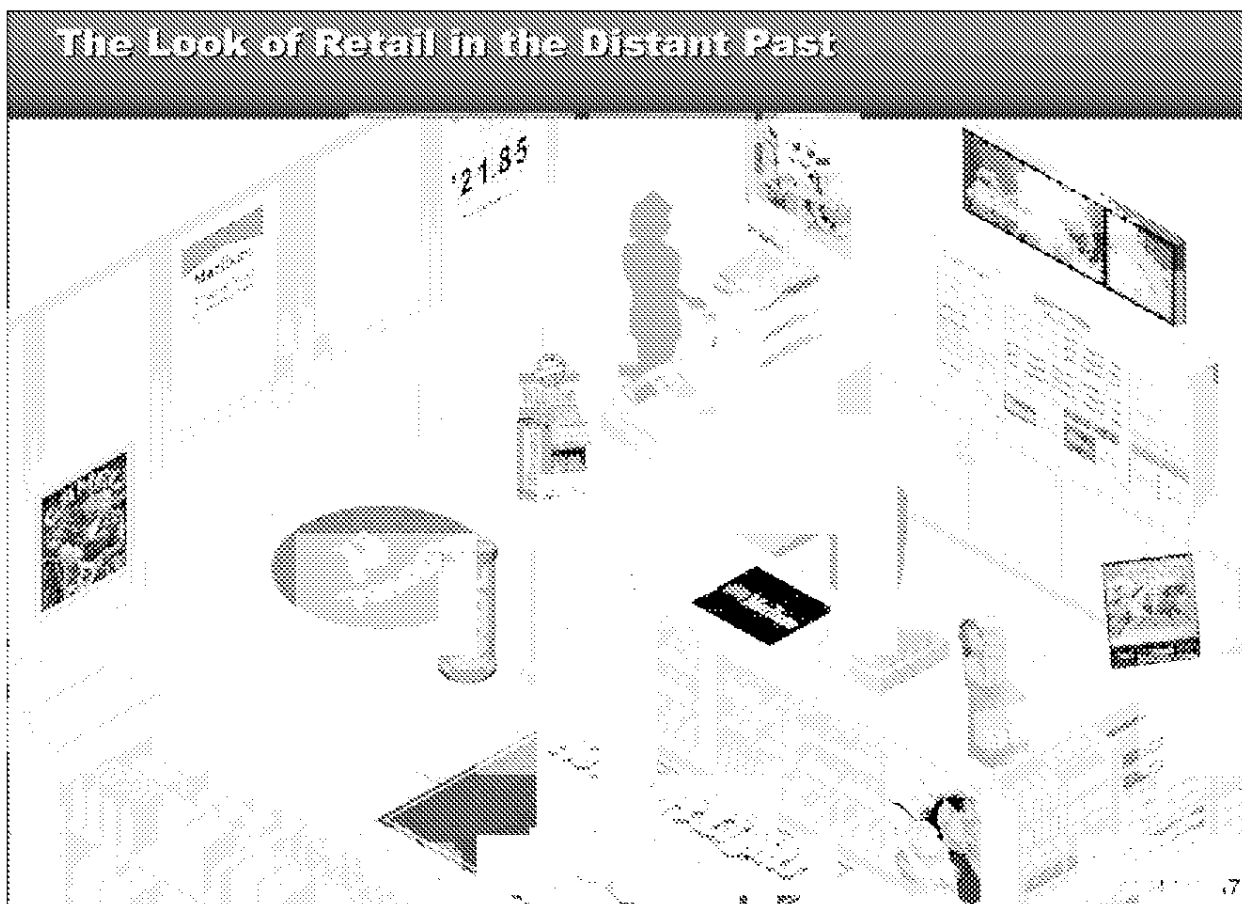
1 merchandising our brands responsibly, the more the retailer can earn. Their highest incentive  
2 payments, however, come from putting in place youth access limitations and other youth  
3 smoking prevention activities. The more access limitations and youth smoking prevention  
4 activities, the higher the per carton payment. We call these higher payment platforms  
5 Progressive Merchandising Options ("PMO").

6 Q: Please describe for the Court why Philip Morris USA felt that this Retail Leaders  
7 program was important?

8 A: Because of intense competition among the tobacco companies at retail, over time, the  
9 visibility and presence of cigarette advertising became extensive. Frequently, there was far too  
10 much signage at multiple locations inside and outside the store. Cigarettes were often displayed  
11 at multiple locations within the store. Philip Morris USA's goal was to reverse this trend by  
12 providing financial incentives to retailers.

13 Q: To illustrate this retail cigarette advertising visibility problem, let me show you  
14 JDEM-040317. Please explain what this illustrates.

15 A: This is just a drawing that illustrates what I call the excessive cigarette advertising clutter  
16 that resulted over the years from intense retail competition. As you can see, cigarette advertising  
17 is in multiple locations, and cigarettes were displayed in locations beyond the control of the store  
18 clerk, which substantially increased the accessibility of cigarettes to underage people (e.g.  
19 pilferage). The Philip Morris USA Retail Leaders program was designed to reduce the  
20 visibility and accessibility of the cigarette category at retail.



Q: To illustrate Philip Morris USA's goal with the Retail Leaders program, let me show you JDEM-040318. Please explain what this illustrates.

A: This drawing illustrates Philip Morris USA's goals with its Retail Leaders program. As you can see, the cigarette category is consolidated to one location with substantially reduced signage, with non-self service displays under the control of the store clerk. I want to make clear that this drawing illustrates the goals Philip Morris USA had in mind when it instituted the Retail Leaders program. I am not suggesting that the cigarette category at every retail store in America looks like this drawing. However, the Retail Leaders program has worked, and substantial progress has been made in obtaining our goals.

## The Look of Retail Today



Q: What percent of your retail volume participates in Retail Leaders?

A: Approximately 87 percent.

Q: What percent of your retail volume participates in PMO?

A: Approximately 85 percent.

Q: I am going to show you JD-045904, JD-045840, JD-045874, JD-050342, JD-050299, JD-050395 and JD-055039. Please describe what these documents are.

A: These are the Retail Leaders contracts for the years 1999 through 2005.

Q: To show the Court how far these incentive programs have evolved in recent years, let me show you pages 3002498572-8597 of JD-050395 which is one of the 2004 Retail

1 Leaders contracts. What were the requirements called for in order for a retailer to earn  
2 incentive payments at the lowest level for that contract?

3 A: A retailer was required to display all cigarettes in a non self-service fashion. We did not  
4 require counter displays in any stores unless the store either decided to have competitive  
5 cigarette counter displays or was so small it had no other space but on the counter to display. In  
6 those contracted small stores, which represent about two and a half percent of our retail volume,  
7 and in contracted stores with competitive counter displays, we required non-self-service counter  
8 displays at our minimum performance level. At a minimum, we also required that retailers offer  
9 our promotions to adult consumers. We required that retailers provide us inventory space in line  
10 with our share of market to minimize out of stocks.

11 Q: Were there other requirements at the minimum level in this 2004 contract?

12 A: Yes. We required that all Philip Morris USA brand interior signage be within 48 inches  
13 of the category. Further, we did not require any retailer exterior signage on our brands.  
14 However, if a retailer chose to use exterior signage, then such signs could not be placed in more  
15 than three exterior locations and must meet the requirements of the MSA. We also required the  
16 retailer to place a minimum of two We Card signs in the interior of the store.

17 Q: What is "We Card"?

18 A: In 1995, Philip Morris USA decided to support a national program sponsored by the  
19 Coalition for Responsible Tobacco Retailing called "We Card." This Coalition includes various  
20 retail and wholesale trade associations such as the National Association of Convenience Stores,  
21 the Food Marketing Institute, the National Grocers Association and similar associations. The  
22 Coalition provides retailers with point-of-sale materials including signs, pins, window and door  
23 decals and age of purchase calendars and stickers for use in retail stores. The materials also



1 include employee training materials that summarize applicable state under-age sales laws and  
2 provide training on how and when to request identification from a customer who wishes to  
3 purchase cigarettes.

4 Q: Who funds the "We Card" program?

5 A. The tobacco companies, including Philip Morris USA.

6 Q: How widespread is the "We Card" program?

7 A. Since its inception, the "We Card" program has distributed over hundreds of thousands of  
8 program kits to retailers around the country. These program kits provide the training materials  
9 for retailers and sample We Card signs. In addition, the "We Card" program has sponsored over  
10 hundreds of training seminars and trained more than tens of thousands of retailers who in turn  
11 train their clerks. All retailers who participate in Philip Morris USA's Retail Leaders program  
12 participate in We Card or a comparable program. In fact, the vast majority of retail outlets in the  
13 United States today that sell cigarettes participate in We Card or a comparable program.

14 Q: Are there different kits for different states?

15 A. Yes.

16 Q: Why?

17 A. Because each state has a different set of laws regarding under age use of tobacco.

18 Q: I have handed you JD-080527, could you please identify this document?

19 A. Yes, it is the kit provided to retailers in the District of Columbia.

20 Q: What are some of the things that are contained in the kit?

21 A. The kit has a number of different components including a calendar, window stickers,  
22 signs, written materials, and buttons.

23 Q: Is a kit available to all retailers who sell cigarettes in the United States?

1 A: Yes.

2 Q: Under the Retail Leaders program, are retailers required to certify to Philip Morris  
3 USA that they have trained employees who sell cigarettes on the We Card program?

4 A: Yes.

5 Q: How do retailers provide certification?

6 A: Within 120 days after signing a Retail Leaders contract with Philip Morris USA, or  
7 within 12 months of the retailers last certification, a retailer must train all employees who staff  
8 registers where cigarettes are sold, sign and complete a We Card Training Certification letter and  
9 provide that letter to Philip Morris USA.

10 Q: In addition, under the Retail Leaders program, are retailers required to place youth  
11 smoking prevention materials in prominent locations?

12 A: Yes. If a retailer elects to receive the PMO, then they must display certain YSP materials  
13 that are designed to combat underage smoking, such as brochures for parents and signs asking  
14 adults to not purchase cigarettes for kids, in addition to We Card materials required for all Retail  
15 Leaders participants.

16 Q: Mr. Szymanczyk, how does Philip Morris USA ensure that its retailers are  
17 complying with their obligations under Retail Leaders?

18 A: Our sales force calls on all our contracted retailers regularly to support them and monitor  
19 their compliance as well as sell them our promotion programs. We penalize retailers for repeated  
20 noncompliance. If Philip Morris USA is informed that a retailer has been fined or convicted of  
21 selling cigarettes to minors then their Retail Leaders benefits will be suspended or terminated  
22 and we deny them access to our promotions.

23 B. THE CURRENT RETAIL ENVIRONMENT IS THE RESULT OF A  
24 PROGRESSIVE EVOLUTION

1 Q: How much different is the retail environment that you see today compared with the  
2 environment you saw in 1990 when you first joined the company?

3 A: As I testified earlier, the retail environment has substantially changed during the time I  
4 have been employed by Philip Morris USA. Those changes were designed to reduce the  
5 visibility of retail cigarette marketing to underage people, and to reduce the accessibility of  
6 cigarettes to underage people.

7 Q: Let's talk about some of those changes. Do you recall a program called "It's the  
8 Law" ?

9 A: Yes. In the early 1990's, Philip Morris USA participated in a youth access prevention  
10 program in conjunction with the National Association of Convenience Stores. The program was  
11 called "It's the Law."

12 Q: Are you generally familiar with the elements of the program?

13 A: Yes.

14 Q: What were the elements of the program?

15 A: The program encouraged retailers to post signs in their stores reminding customers that it  
16 is illegal to sell cigarettes to minors. The program materials included storefront and window  
17 display signs, as well as point of sale materials, all of which bore the theme "It's the law: you  
18 must be 18 to buy tobacco products."

19 Q: Showing you JD-040232, do you recognize this document?

20 A: It is a program summary of the It's the Law program.

21 Q: And according to this document, "It's the Law was developed by Philip Morris USA  
22 and NACS, the National Association of Convenience Stores, in 1989" and "has 55,000  
23 participants and interested parties" correct?

1 A: Yes, that is what it says.

2 Q: And how many retailers participate in today's "We Card" program?

3 A: Over 250,000.

4 Q: What was the next major change in the retail environment after It's the Law?

5 A: Retail Masters.

6 Q: What is Retail Masters?

7 A: It was the predecessor program to Retail Leaders. It introduced more efficient inventory

8 management principles and encouraged the retailer to eliminate unnecessary cigarette displays in

9 an attempt to reduce the visibility of retail cigarette marketing to underage people.

10 Q: What was the next major change in the retail environment?

11 A: In 1995, Philip Morris USA established a program called Action Against Access.

12 Q: What was Action Against Access?

13 A: A comprehensive voluntary program Philip Morris USA initiated to address the issue of

14 youth access to cigarettes.

15 Q: Showing you what has been marked as Exhibit JD-041086, can you identify this

16 document?

17 A: Yes, this is a brochure we released at the time we initiated the program. It sets forth the

18 basic elements of Action Against Access.

19 Q: Let me ask you about some of the program elements. Do you see where the elements

20 are listed at page two?

21 A: Yes, there were six elements.

22 Q: What were the six elements?

1 A: First, it required that a notice be placed on all packs and cartons of Philip Morris USA  
2 cigarettes stating: "Underage Sale Prohibited." Second, it discontinued all free cigarette  
3 sampling. Third, it eliminated the distribution of cigarettes through the mail. Fourth, it denied  
4 merchandising payments and participation in our retail incentive program to stores which were  
5 reported to have been fined or convicted for selling cigarettes to minors. Fifth, it required Philip  
6 Morris USA to assist retailers in complying with minimum age laws. Sixth, it committed Philip  
7 Morris USA to remain vigilant in its aggressive efforts to prevent the use of Philip Morris USA  
8 cigarette brand names or logos on any item marketed to minors, including video games and toys.

9 Q: Let me turn to page 4, which lists Philip Morris USA's goals with regard to state  
10 legislation. What are the goals listed?

11 A: Philip Morris USA expressed support for legislation concerning: (1) licensing and  
12 enforcement of cigarette retailers; (2) restricting vending machines; (3) placement of cigarettes at  
13 retail outlets; and (4) minimum age signs at retail outlets.

14 Q: Was this an important initiative for Philip Morris USA?

15 A: Yes, we had a press conference when we announced this program attended by the then-  
16 CEO and me.

17 Q: Why did you participate in the press conference?

18 A: Because I had recently become Executive Vice President of Marketing and Sales and my  
19 organizations had the responsibility for implementing much of Action Against Access.

20 Q: Mr. Szymanczyk, did Philip Morris USA follow through on the commitments it  
21 made in Action Against Access?

22 A: Yes.

23 Q: What was the next change in the retail environment?

1 A: The launch of the We Card program in 1995, which we have already discussed.

2 Q: What was the next change in the retail environment?

3 A: Philip Morris USA launched Retail Leaders in 1998.

4 Q: Did Retail Leaders include the PMO Options that you discussed earlier, in 1998?

5 A: No, they were added in 2001.

6 C. PHILIP MORRIS USA HAS A RESPONSIBLE POLICY REGARDING  
7 INTERNET, TELEPHONE AND MAIL ORDER SALES

8 Q: Does Philip Morris USA have policies regarding the sale of its cigarette products  
9 over the internet?

10 A: Yes we do.

11 Q: What are Philip Morris USA policies on sales of cigarettes over the internet?

12 A: The retailer must be able to verify that the purchaser is of legal age, at both the time of  
13 purchase and at the point of delivery, and the retailer must be able to verify that state excise taxes  
14 are paid on the purchase for the location where they are delivered.

15 Q: Why does Philip Morris USA have such policies?

16 A: For two reasons. First, because we do not want kids to buy cigarettes over the internet,  
17 and we are not aware of an internet capability to ensure that is not happening. In a retail store  
18 environment, a face-to-face transaction must occur where age can be verified. Second, we are  
19 not aware of a viable methodology that ensures that state excise taxes are getting paid properly  
20 on internet cigarette sales.

21 Q: Are you aware of any internet retail sellers who have been able to meet the  
22 requirements Philip Morris USA has imposed?

23 A: No.

24 Q: Does that policy apply only to the internet?

1 A: No, it also applies to mail order and telephone sales.

2 Q: Mr. Szymanczyk, how would you characterize Philip Morris USA's retail practices  
3 in relation to the company Mission?

4 A: As I previously stated, I believe we made significant progress in consolidating the  
5 cigarette category and reducing the visibility of cigarette signage in retail stores. I also believe  
6 we have substantially helped retailers become more successful in preventing underage sales of  
7 cigarettes to minors. Our retail practices today represent thoughtful work done by our employees  
8 that has been consistent with our Mission goals.

9 VI. YSP

10 A. PHILIP MORRIS USA SPENDS HUNDREDS OF MILLIONS OF  
11 DOLLARS COMBATING UNDERAGE SMOKING

12 Q: Going back to our recent business practices chart, bullet point three says "Youth  
13 Smoking Prevention Activities," correct?

14 A: That's right.

## Recent Business Practices

No Reasonable Likelihood that Philip Morris Will Engage in Wrongdoing in the Future

10/10/2007 10:17:11 AM

1. Responsible Communications With Public Regarding Tobacco Issues
2. Responsible Marketing, Advertising and Retailing of Cigarettes
3. Youth Smoking Prevention Activities
4. Recent Research and Development Activities Regarding Less Hazardous Cigarettes
5. Compliance With the Master Settlement Agreement



Government's Evidentiary Gap

JCEM-041257

Q: Does Philip Morris USA want people who are under the legal age to smoke?

A: No.

Q: Why not?

A: First, it is just plain wrong for kids to smoke because it causes disease and it is addictive.

Second, although we do not sell cigarettes directly to consumers, it is illegal for kids to buy

cigarettes and we want to do our part to prevent that from happening. Third, to the extent a

societal perception exists that we market our products to kids, it undermines our ability to

accomplish our Mission and continue to have a license to operate from society.

Q: Having said that, some underage people smoke cigarettes, right?

A: Yes.



1 Q: What has Philip Morris USA done to prevent youth smoking since you have been  
2 with the company?

3 A: Before I joined the company in 1990, the industry had adopted a Cigarette Advertising  
4 Code to limit certain marketing practices and participated in an access prevention program called  
5 It's the Law, that I described above. As I also described above, in 1995, Philip Morris USA  
6 launched a program called Action Against Access which included an array of access prevention  
7 measures that are in place today. Among its other features, Action Against Access incorporated  
8 the We Card program I described earlier. Then in 1998, I created our Youth Smoking Prevention  
9 department. Over the last seven years, we have learned a lot about preventing youth smoking  
10 and funded a lot of programs based on that learning.

11 Q: What things has Philip Morris USA done to reduce underage smoking?

12 A: I believe Dr. Levy and Mr. Willard have or will provide detailed testimony to this Court  
13 regarding Philip Morris USA's recent efforts to reduce underage smoking. However, I will  
14 provide a summary of what Philip Morris USA has done in this regard. As I mentioned, I put a  
15 Youth Smoking Prevention Department in place in 1998. Our organization did a thorough  
16 review of the literature on this subject, as well as literature on how to keep kids from engaging in  
17 high risk behavior like smoking. Initially, based on this research, we developed an advertising  
18 campaign directed at 10-14 year olds, and we funded a number of positive youth development  
19 organizations which had their own positive youth development programs. We also identified a  
20 program, called Life Skills Training, from Cornell University, and began funding it in an array of  
21 public school systems across the country. In addition, as I previously testified, we began adding  
22 incentives to our retail merchandise programs to help retailers limit cigarette access to kids.

23 Q: How much money has Philip Morris USA spent on these recent YSP efforts?

1 A: No single organization, to my knowledge, has spent more money fighting youth smoking.  
2 As I said earlier, Philip Morris USA has spent over one billion dollars in its youth smoking  
3 prevention efforts in recent years.

4 Q: On what has Philip Morris USA spent this money?

5 A: Over the past seven years, we funded the development of television advertising, the  
6 creation and distribution of brochures and other resources for parents, the implementation of  
7 school and community based programs developed by others, access prevention programs, and  
8 research to help us better understand underage smoking trends and how to reduce youth  
9 smoking.

10 Q: When you say you have spent over one billion dollars, can you give me a timeframe?

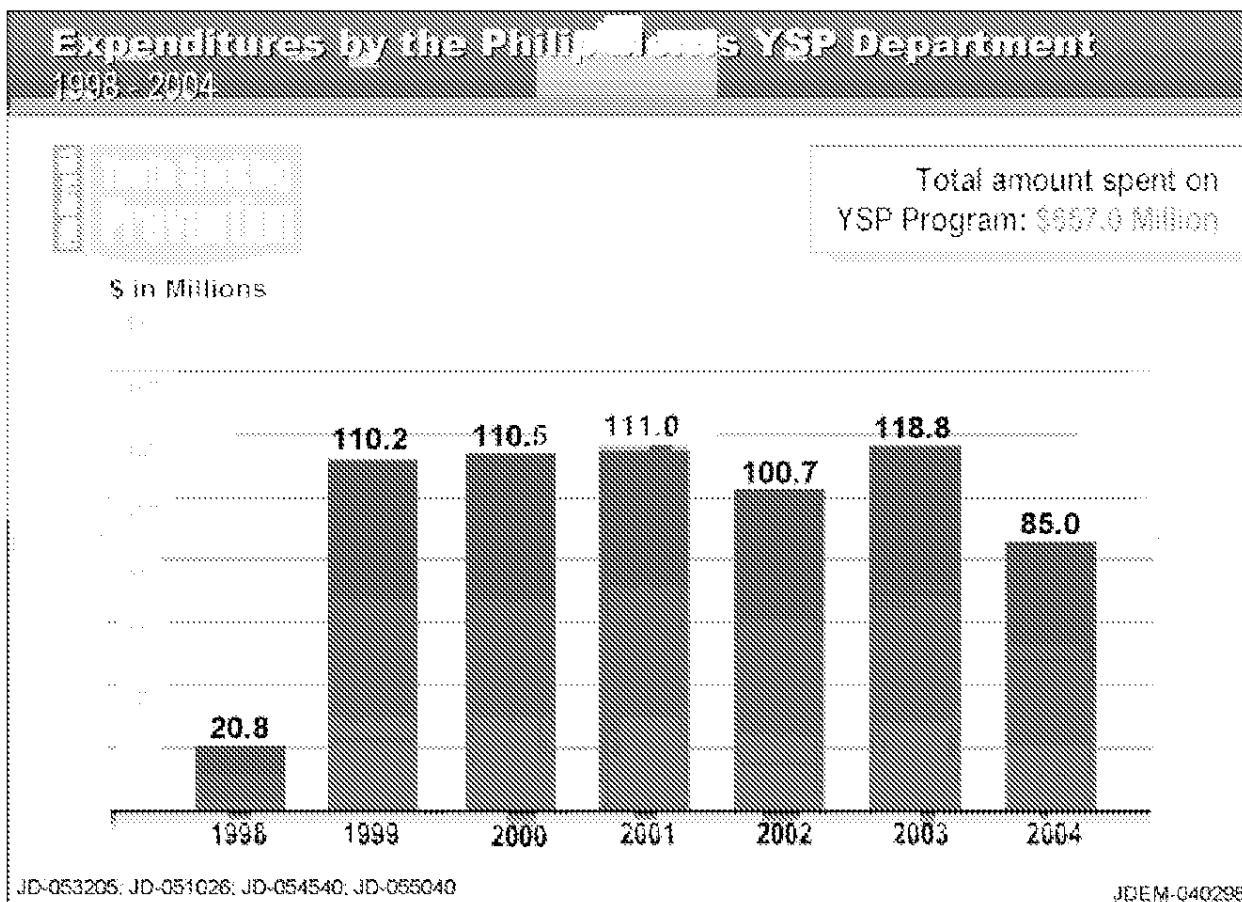
11 A: That figure represents money that has been spent from 1998 to the present combating  
12 youth smoking.

13 Q: Have you prepared a chart summarizing the amount of money that has been  
14 provided to Philip Morris USA's Youth Smoking Prevention Department that was used to  
15 combat underage smoking?

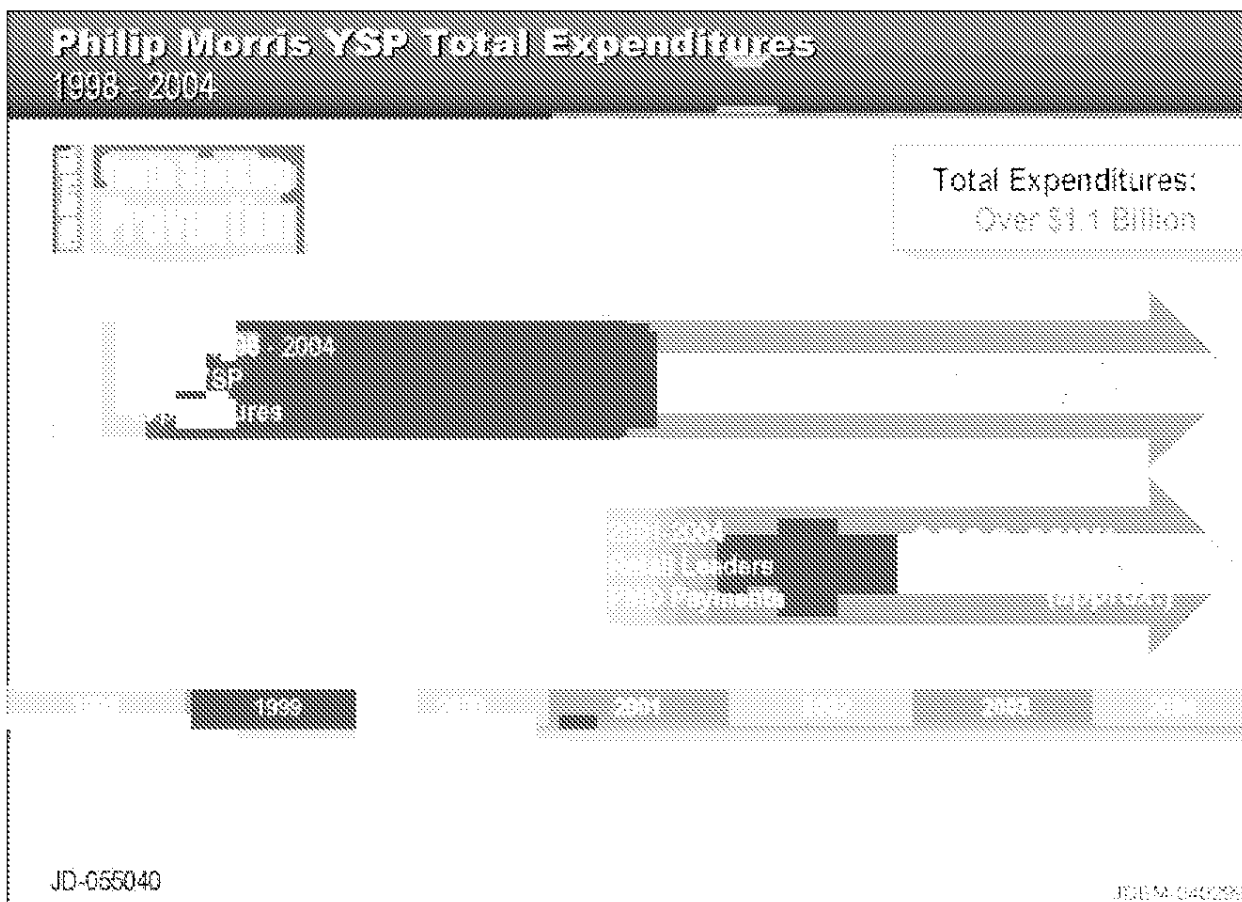
16 A: Yes I have.

17 Q: Showing you JDEM-040298, do you recognize this document?

18 A: Yes, this is the chart I have prepared that reflects the expenditures by the Philip Morris  
19 USA YSP Department from 1998 through 2004. Since 1998, the company has spent \$657  
20 million on its youth smoking prevention efforts through the YSP department



- 1
- 2 Q: Let me now show you JDEM-040299. Please describe what this chart illustrates.
- 3 A: This chart reflects Philip Morris USA's total youth smoking prevention expenditures.



Q: Looking at the first arrow, "Total YSP Expenditures," what does this refer to?

A: This is the total YSP expenditures as set forth in JDEM-040298, referenced above.

Q: Looking at the next item - "Retail Leaders PMO Payments" - what is this referencing?

A: This is referencing the money Philip Morris USA has spent through its Retail Leaders program from 2001 through the end of 2004 to incent retailers to engage in responsible retailing practices that are intended to reduce youth access and reduce the visibility of cigarette marketing to underage people. In other words, this represents additional money spent by Philip Morris USA to prevent youth smoking.

Q: According to this chart, how much has Philip Morris USA spent in these efforts?

1 A: Approximately \$500 million dollars.

2 Q: Does this include all of the money Philip Morris USA paid to retailers to  
3 merchandise its products?

4 A: No. It does not include merchandising payments for display, inventory management and  
5 branded signage. Recall that the payments to retailers include two parts: a merchandising  
6 payment and the Progressive Merchandising Option. This amount is only for the Progressive  
7 Merchandising Option.

8 Q: Therefore, what is the total amount of money Philip Morris USA has expended for  
9 youth smoking prevention activities from 1998 to 2004?

10 A: Over \$1.1 billion.

11 Q: Again, do you know of any other single organization that has spent this much money  
12 for youth smoking prevention activities from 1998 to 2004?

13 A: I do not know of any.

14 Q: Mr. Szymanczyk, does Philip Morris USA provide any other money that is used to  
15 prevent youth smoking that you have not listed on your chart?

16 A: Yes.

17 Q: What other money does Philip Morris USA provide?

18 A: We provide money pursuant to our payment obligations under the MSA, including  
19 payments that have been used to fund the American Legacy Foundation, which was established  
20 under the MSA to study and implement programs to reduce youth smoking. We also make our  
21 annual contribution to the states under our MSA obligations. Some of that money is used by  
22 certain states for youth smoking prevention and other youth programs.

1 Q: Now, you have not included the money Philip Morris USA has paid under the MSA  
2 in the figure reflected on this chart have you?

3 A: No. I have not. The money reflected on the chart reflects what we have done beyond  
4 what we are legally required to pay under the MSA.

5 Q: Let me show you JD-047701. What is this document?

6 A: This is a table listing the payments Philip Morris USA has made pursuant to its  
7 obligations under the MSA and SSS.

8 Q: Based on this document, how much has Philip Morris USA paid under the MSA  
9 that has gone to the American Legacy Foundation?

10 A: Through April of 2004, Philip Morris USA paid \$794.2 million to the American Legacy  
11 Foundation.

12 Q: How much money has Philip Morris USA paid to the states pursuant to its MSA  
13 obligations through 2004?

14 A: Through April of 2004, Philip Morris USA paid \$29.699 billion under the MSA and State  
15 Settlement Agreements. Since that date Philip Morris USA has made payments pursuant to the  
16 State Settlement Agreements totaling approximately \$650 million.

17 Q: Do the states have any control over whether any of this MSA money is spent on  
18 youth smoking prevention efforts?

19 A: Yes, the States have complete control over how the money is spent.

20 Q: Do any of the States spend money on underage smoking prevention?

21 A: Yes, but the amount varies by state.

22 Q: Is your payment level to the states going to remain constant over the next several  
23 years?

1 A: No, the payment rates to the States steps up in 2008 and that will yield the States  
2 approximately \$600 million more from Philip Morris USA for 2008 than we paid in 2004.

3 Q: Is that money designated for any specific purpose in the MSA?

4 A: No.

5 Q: Could that money be spent on underage smoking prevention?

6 A: Yes, if the states decide to do that.

7 B. PHILIP MORRIS USA HAS CREATED A YSP DEPARTMENT TO  
8 REDUCE YOUTH SMOKING

9 Q: I want to turn back to the YSP department. What is Philip Morris USA's YSP  
10 Department?

11 A: It is a department I put in place in the Spring of 1998 to help reduce underage smoking in  
12 this country.

13 Q: Why did you create the Youth Smoking Prevention Department?

14 A: Because our Mission calls for us to do our part to reduce underage smoking. In order to  
15 do that we needed resources in place to do the work.

16 Q: Who runs the Youth Smoking Prevention Department?

17 A: The Senior Vice President of Youth Smoking Prevention and Corporate Responsibility.  
18 His name is Howard Willard. Prior to 2002, the head of the YSP Department was Dr. Carolyn  
19 Levy.

20 Q: In 1998, did you make a decision that the Youth Smoking Prevention Department  
21 would be a stand-alone department?

22 A: Yes.

23 Q: Why did you make that decision?

1 A: It was important to dedicate people to the task whose single job was to prevent underage  
2 smoking and to devote resources or money specifically dedicated to this program. Further, it  
3 was important that YSP have prominence within the organization. By making it a separate,  
4 stand-alone department, and reporting directly to me, it was put on the same priority level as all  
5 other Philip Morris USA business functions.

6 Q: Showing you JD-045146 do you recognize this document?

7 A: Yes, this is a letter I wrote on September 15, 1999, addressed to all Philip Morris USA  
8 employees. The purpose of this letter update Philip Morris USA employees on the  
9 accomplishments of the YSP Department.

10 Q: Please read the first few paragraphs of that letter?

11 A: "For more than a year now, the Youth Smoking Prevention department has been working  
12 to develop and support comprehensive, collaborative and measurable approaches to help reduce  
13 youth smoking. As a responsible manufacturer of a product that has associated health risks,  
14 helping to prevent kids from smoking is a responsibility as well as a core business objective. It  
15 helps define us as a company and is one of the ways that we live up to our mission and our goals.  
16 We are equally dedicated to upholding all of the provisions of the Master Settlement Agreement,  
17 an important part of which is our commitment to help reduce the incidence of youth smoking.  
18 However, achieving our goals in this area cannot only be the work of the YSP department. It is  
19 the responsibility of each of us in the organization."

20 Q: Has the YSP Department changed Philip Morris USA's corporate culture?

21 A: Yes. My organization recognizes the harm caused by our products in society. Our  
22 employees take pride in our youth smoking prevention efforts because they believe that these  
23 efforts help reduce some of the harm. Our learnings and our efforts in youth smoking prevention



1 have encouraged employees to work on other harm reduction efforts like development of the  
2 website and cessation program development. These efforts have enhanced our employees' ability  
3 to engage with external stakeholders, some of whom are harsh critics, in an effort to learn how  
4 we can better accomplish our Mission.

5 Q: Do you believe that Philip Morris USA is doing its part to prevent youth smoking?

6 A: The bottom line is this: There is no silver bullet solution to this problem. I believe it  
7 takes effort from parents, tobacco companies, the government, the public health community and  
8 schools to make progress. We cannot solve this problem by ourselves, but I believe we have  
9 contributed to the reduction in underage smoking that has occurred each and every year since we  
10 put our program in place.

11 VII. PHILIP MORRIS USA'S INVESTMENT IN THE RESEARCH AND  
12 DEVELOPMENT OF PRODUCTS THAT MAY REDUCE HARM

13 A. PHILIP MORRIS USA'S COMMITMENT TO HARM REDUCTION

14 Q: Going back to our current business practices chart JDEM-040287 the next point  
15 says "Recent Research and Development Activities Regarding Less Hazardous Cigarettes."  
16 What is this referencing?

17 A: This references Philip Morris USA's efforts to develop technologies that may result in  
18 less harmful cigarette products some day.

## Recent Business Practices

No Reasonable Likelihood that Philip Morris Will Engage in Wrongdoing in the Future

10/10/2013 10:17:11 AM

1. Responsible Communications With Public Regarding Tobacco Issues
2. Responsible Marketing, Advertising and Retailing of Cigarettes
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4. Recent Research and Development Activities Regarding Less Hazardous Cigarettes
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Government's Evidentiary Gap

JCEM-041257

Q: How important to Philip Morris USA are its efforts to reduce the harm caused by cigarette smoking?

A: We believe that it is critical and central to our Mission to provide consumers with products they enjoy that are potentially less hazardous.

Q: Why?

A: Because it is the right thing to do. It is also in Philip Morris USA's economic interest to respond to what consumers tell us they want. So in addition to being the right thing to do, pursuing less hazardous products also offers us a potential competitive advantage.

Q: What resources does Philip Morris USA bring to bear in this effort?

1 A: The resources include Philip Morris USA scientists and other employees, its extensive  
2 Research and Development facilities, the scientists and facilities of external laboratories with  
3 whom Philip Morris USA contracts, and researchers at major universities both in the United  
4 States and abroad.

5 Q: Can you describe generally the type of people who work in the Philip Morris USA  
6 Research and Development Department?

7 A: Philip Morris USA tries to hire the best scientists available. The backbone of the  
8 department is made up of Ph.D.s, and we currently employ about 100 of those, in a variety of  
9 scientific disciplines, including toxicology, biology, chemistry, and various engineering fields.  
10 This number will increase significantly in the near future as part of a major planned expansion.

11 Q: Would you describe the Research and Development facilities at Philip Morris USA?

12 A: The major research and development facilities are located in Richmond, Virginia. There  
13 is a large building equipped with a variety of labs and a number of other smaller buildings. The  
14 main facilities house over 700 people. There are also research facilities world-wide, including an  
15 outstanding research laboratory called PMRL (formerly called INBIFO) in Germany, that  
16 perform services for Philip Morris USA. In addition to our in-house facilities, Philip Morris  
17 USA also relies extensively on work performed under contract by outside labs and scientists,  
18 especially for testing products and materials.

19 Q: Is Philip Morris USA planning on adding new research facilities?

20 A: Yes. We are moving forward on a plan to add a major new research facility.

21 Q: Let me show you JD-052833. This appears to be Philip Morris USA's Monthly  
22 Financial Report for December 2003. Does this document reflect the annual 2003  
23 expenditures for the Research and Development Department?

1 A: Yes, it does, on page 6.

2 Q: Please identify that amount.

3 A: In 2003, the annual expenditures for the Research and Development was approximately

4 \$224 million.

5 Q: How much of that is devoted to harm reduction?

6 A: About 80 percent of the total R&D budget is devoted to scientific efforts that, it is hoped,

7 will reduce the harm from smoking. That percentage is likely to increase with the expansion.

8 Q: What efforts has Philip Morris recently undertaken to reduce the harms associated

9 with cigarette smoking?

10 A: The most obvious of our efforts is the work we do to develop new technologies and

11 methods designed to reduce smokers' exposure to certain harmful compounds in cigarette smoke.

12 A second, but equally important part of our efforts is the work our scientists are doing to develop

13 and implement new tests, processes, and protocols to help assess the degree of harm reduction

14 achieved by these new technologies.

15 B. GUIDANCE FROM THE INSTITUTE OF MEDICINE

16 Q: I will ask you about each of those later. But first, are there any principles that guide

17 Philip Morris USA's efforts to reduce the harms associated with its products?

18 A: Yes. Our efforts are guided by principles developed by the Institute of Medicine at the

19 request of the FDA and spelled out in a 2001 report entitled *Clearing the Smoke: Assessing the*

20 *Science Base for Tobacco Harm Reduction*.

21 Q: Let me show you JE-032485. Is this the IOM report you just mentioned?

22 A: Yes, it is.

23 Q: What is the Institute of Medicine?

1 A: The Institute of Medicine or IOM is one of the National Institutes of Health and is a  
2 collection of eminent members of the health professions charged with examining policy matters  
3 pertaining to the public health.

4 Q: What is your general understanding of how the IOM report was prepared?

5 A: As the report itself notes -- on page 1-8 (99053087) -- the IOM convened a committee of  
6 experts to formulate scientific methods and standards by which potential reduced exposure  
7 products (PREPs) could be assessed.

8 Q: Were any of the committee members at all affiliated with the tobacco industry?

9 A: No. There were no tobacco company scientists who served on the IOM committee or  
10 consulted for it.

11 Q: Did the tobacco companies participate in any way in the committee's proceedings?

12 A: We advised the IOM that we were willing and interested in participating in the  
13 discussion. We requested and were permitted to give a presentation in March of 2000.

14 Q: Let me show you a series of documents that have been marked as JD-044956, JD-  
15 049333, JD-049335 and JD-049336. What are the documents?

16 A: These are the presentations that our scientists gave to the IOM committee and the  
17 correspondence that was exchanged between our scientists and the IOM committee before and  
18 after the presentations. I am generally familiar with these documents.

19 Q: Was this dialogue with the IOM a productive dialogue from Philip Morris USA's  
20 perspective?

21 A: Yes. My understanding is that our scientists provided extensive answers to the  
22 committee's follow-up questions, which you can see from the lengthy and detailed letter Dr.

1 Richard Solana, then the head of Worldwide Scientific Affairs, sent to the IOM committee,  
2 which is JD-049336.

3 Q: What did the report conclude?

4 A: The report concluded -- on pages 3 and 4 of the Executive Summary (99053066-3067) --  
5 that harm reduction is feasible and an appropriate component of tobacco control policy. I am  
6 also aware that the report proposed a framework to pursue harm reduction which it described  
7 through 11 principles. The 11 principles are designed to guide the process by which potentially  
8 reduced harm products are pursued.

9 Q: Why does Philip Morris need guidance from the public health community to reduce  
10 the harms caused by its products?

11 A: *Clearing the Smoke* identified a number of scientific and policy issues that must be  
12 addressed in order to assure that the availability of less hazardous cigarettes will actually reduce  
13 the incidence of smoking-related diseases. Without some guidance on these issues, Philip Morris  
14 cannot be sure that the steps it takes actually reduce the harms of smoking.

15 Q: What are some of these issues that remain?

16 A: One issue is how do you go about making a cigarette that will cause less disease. There  
17 is no agreed-upon standard for what is a less hazardous cigarette. So, when company scientists  
18 develop a new prototype cigarette, they do not know definitively whether it is, in fact, less  
19 hazardous. A second issue is, what is the appropriate way to communicate the attributes of the  
20 product to consumers? A third and related issue is, how do you make sure that the marketing of  
21 a less hazardous cigarette does not inadvertently result in more people getting smoking-related  
22 diseases, because it discourages current smokers from quitting or encourages nonsmokers to  
23 start?

1 Q: Why cannot Philip Morris resolve these issues on its own?

2 A: Because we believe that Philip Morris USA cannot and should not be the only one  
3 weighing in on these issues. This is why we encourage our scientists to reach out to other  
4 scientists and members of the public health community to share information about our products  
5 and research and to engage in discussions about smoking and health issues.

6 Q: Let's talk about the some of the principles identified in the IOM report. Please turn  
7 to page seven of the executive summary. What is contained in the box?

8 A: These are the eleven regulatory principles recommended by the IOM.

9 Q: How do these principles guide Philip Morris USA's efforts?

10 A: We have adopted these principles to the extent that we can in the absence of regulation.  
11 We have also supported legislation that would empower the Food & Drug Administration to  
12 regulate in a manner consistent with these principles.

13 Q: Is Philip Morris USA legally obligated to follow the IOM principles?

14 A: No. The principles are not legally binding on any organization.

15 Q: Why has Philip Morris USA chosen to adopt these principles?

16 A: In the absence of government regulation, Philip Morris USA believes that the IOM  
17 principles provide the best scientific guidance available yet. Moreover, if FDA regulation  
18 becomes a reality, the FDA will provide standards for evaluating new technologies and products  
19 that may be based on the IOM principles. If that happened, Philip Morris USA would already be  
20 operating within the IOM framework.

21 C. DEVELOPMENT OF NEW TECHNOLOGIES AND METHODS

22 Q: You testified that Philip Morris USA is trying to reduce the harms associated with  
23 cigarette smoking by developing new technologies and methods designed to reduce

1 smokers' exposure to certain harmful compounds in cigarette smoke. Please describe  
2 generally what you mean by that.

3 A: The public health community has identified a number of compounds—out of the  
4 thousands present in cigarette smoke—that are potentially harmful to smokers, without  
5 definitively settling on any specific one (or combination of them) as the recognized cause of lung  
6 cancer or other smoking-related disease. Accordingly, our basic strategy is to reduce smokers'  
7 exposure to as many of these compounds as we can, by means of products that will provide  
8 continued enjoyment to our consumers.

9 Q: How is Philip Morris USA attempting to reduce smokers' exposure to potentially  
10 harmful compounds?

11 A: Our scientists are exploring a variety of new technologies and methods that fall within  
12 one of three conceptual categories: Source reduction, modifications to the combustion process,  
13 and selective filtration.

14 Q: What is source reduction?

15 A: Source reduction is the removal of the harmful compound from the tobacco itself.  
16 Currently, our scientists are looking at ways to reduce tobacco-specific nitrosamines, or TSNAs,  
17 and heavy metals, such as cadmium.

18 Q: What is Philip Morris USA doing to modify the combustion process?

19 A: The formation of some potentially harmful compounds occurs during the process of  
20 burning tobacco. At certain temperatures, certain of these compounds are formed. So some of  
21 our research has focused on the burning of tobacco and determining things like the temperature  
22 at which certain compounds are formed. We are also trying to figure out ways to prevent the  
23 formation of these compounds by reducing the temperature at which the tobacco is burned in a



1 cigarette. One way to do this is to heat, rather than to burn, tobacco. That is the idea behind our  
2 electrically heated cigarette, which we have test marketed under the name Accord.

3 Q: What is Philip Morris USA doing in the area of selective filtration?

4 A: Our scientists are looking at methods that will allow us selectively to filter out some gas  
5 phase constituents in cigarette smoke by using specially developed activated carbon filtration.  
6 We have also funded research on the use of other filtration media, such as silica gel. With the  
7 exception of activated carbon, however, none of these has proven to be feasible yet.

8 Q: Why can't Philip Morris use a traditional filter to eliminate these constituents?

9 A: We do use a filter to reduce all constituents today. This is one of the methods that we use  
10 to offer consumers a range of low tar products. These traditional filters, however, do not  
11 selectively reduce potentially harmful compounds.

12 Q: Is the activated carbon filter the same as the charcoal filters that have been on some  
13 cigarettes since the 1950s?

14 A: No. My understanding is that the activated carbon used in the new filters has a much  
15 higher and more effective absorption rate. The new activated carbon filters also contain over  
16 four times the amount of carbon than used in previous filters and use types of carbon that were  
17 not available until recently.

18 Q: What are some of the specific technologies and methods that Philip Morris USA is  
19 developing to take advantage of these concepts?

20 A: We are exploring several technologies and methods. One of our efforts focuses on  
21 developing an electrically heated cigarette that heats tobacco instead of burning it. A second  
22 effort focuses on developing a conventional, "lit-end" cigarette with significant reductions in  
23 some of the compounds that the public health community has identified as potentially harmful.

1 Both of those efforts are in development and have resulted in products that we are putting  
2 through toxicological tests and clinical trials. Finally, a third effort focuses on developing  
3 methods to reduce the levels of TSNA's that exist in the company's cigarettes. The  
4 fruits of this effort have and will be implemented to the extent possible in every cigarette that we  
5 sell.

6 Q: What is the technology that focuses on heating tobacco?

7 A: The electrically heated cigarette or EHC. This technology is being used in a product we  
8 call Accord.

9 Q: What is the technology that focuses on filtering out harmful components?

10 A: We have a platform of technologies that we refer to as "SCoR," which stands for smoke  
11 constituent reduction. This is an effort to develop and market a conventional "lit-end" cigarette  
12 that reduces risk and is acceptable to consumers. The program is designed to achieve significant  
13 reductions in some of the compounds in cigarette smoke that have been identified by the public  
14 health community as potentially harmful.

15 Q: Could you explain to the court what the electrically heated cigarette is?

16 A: In simple terms, it is a cigarette that is constructed differently and is used in an electronic  
17 computer controlled lighter. The tobacco in the electrically heated cigarette is heated, as  
18 opposed to burned in the case of a conventional cigarette. The heating takes place in this special  
19 lighter. Basically, you apply an electric heater to tobacco. This raises the temperature of the  
20 tobacco to the point that it allows the generation of smoke, but below the temperature at which  
21 many potentially harmful compounds are created. As a result, the smoke that is generated  
22 contains lower levels of many of these compounds.

23 Q: What is JD-044876?

1 A: This is the Electrically Heated Cigarette Smoking System.

2 Q: Let me show you JDEM-040320. What does this show?

3 A: This is a picture of the Accord packaging.



5 Q: Does this product differ from conventional products in other ways besides reduced  
6 levels of potentially harmful compounds?

7 A: Yes. It does not create any cigarette smoke when it is not being puffed on. Accordingly,  
8 this product does not generate any sidestream smoke.

9 Q: Does Philip Morris USA sell the electrically heated cigarette in stores today?

1 A: We are currently running a consumer test of the product, sold as Accord, in some retail  
2 stores in Richmond, Virginia, as a part of consumer research project to understand how  
3 consumers respond to the different ritual that is required by the design of the product.

4 Q: Are there problems in getting consumers to accept that kind of product?

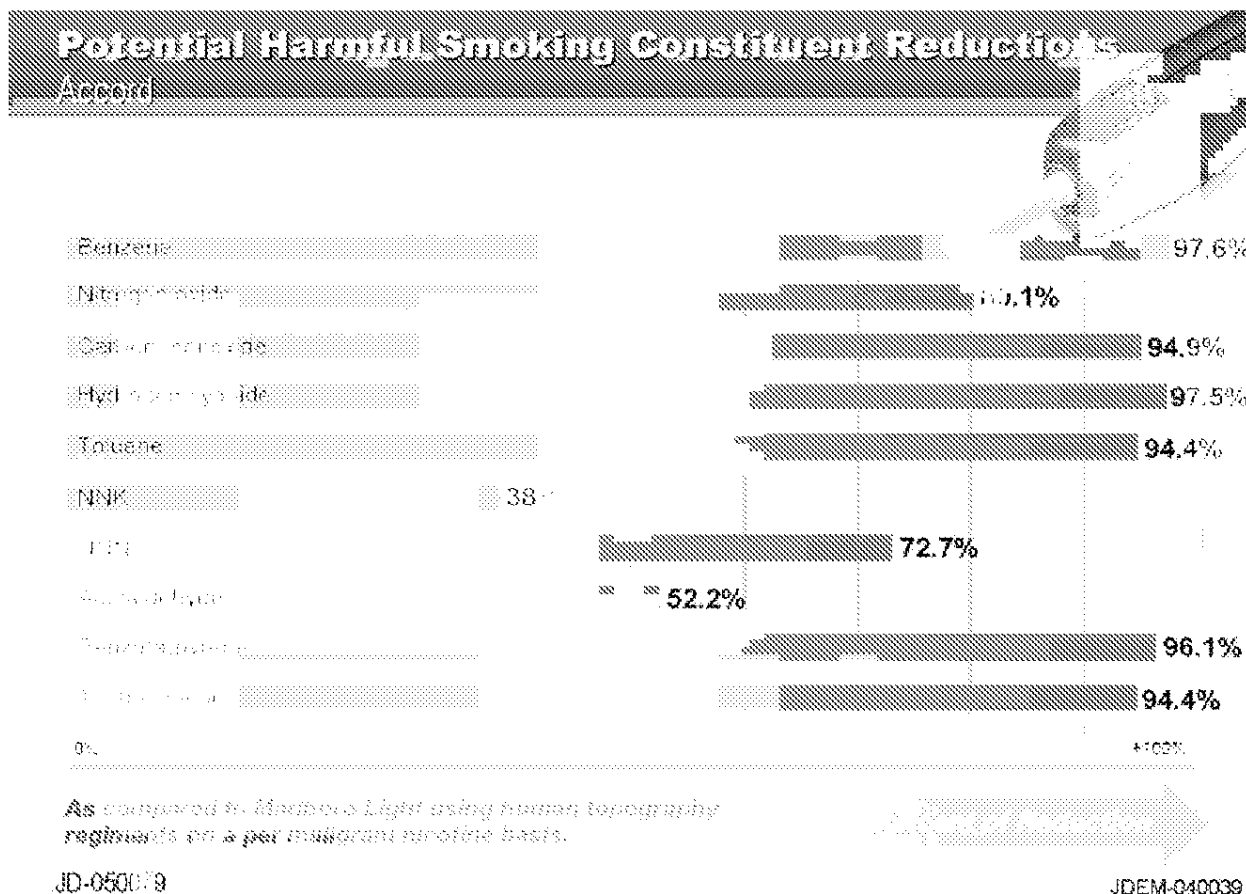
5 A: Yes. It has some taste differences and a significant difference in the smoking ritual  
6 versus what consumers are used to. We have been working on both of these areas. We have a  
7 new lighter under development, as well as improvements in the cigarette itself that we are  
8 working on.

9 Q: What are the compounds that Philip Morris USA is able to reduce in Accord?

10 A: Accord significantly reduces the levels of many constituents that the public health  
11 community has identified as potentially harmful. Some of these compounds have been reduced  
12 as much as 90 percent or more.

13 Q: Let me show you JDEM-040039, do you recognize this document?

14 A: Yes. This is a chart which lists a number of constituent which Accord reduces as  
15 compared to a Marlboro Light. We are currently showing over 90 percent reductions in benzene,  
16 carbon monoxide, hydrogen cyanide, toluene, benzo(a)pyrene and 1,3 butadiene.



Q: Why is Philip Morris USA continuing to spend money on Accord when it has so many issues to overcome?

A: We believe the technology is promising enough to cause us to continue to improve the product based on consumer input, complete clinical tests, validate reductions in potentially harmful compounds under real-world conditions and share what we have learned with the public health community. We do not know enough at this point to conclude that Accord can be a commercial success, but it is worth investing to find out.

Q: Let me show you JD-050234. Does this document show how much money Philip Morris USA has spent on the electrically heated cigarette?

1 A: Yes, this document reflects that through 2003, we had spent over \$370 million in  
2 operating expenses and nearly \$50 million in capital expenses. Those figures do not include the  
3 amount of money we spent on the salaries of the people who are working on the product.

4 Q: Turning to the second effort you identified, what is SCoR?

5 A: SCoR refers to a group of technologies focused on developing a lit-end cigarette that can  
6 be shown to reduce exposure to certain of the smoke constituents identified by the public health  
7 community as harmful and that is also acceptable to consumers. SCoR is not a single product,  
8 but a platform of technologies.

9 Q: When did Philip Morris USA begin working on SCoR?

10 A: My understanding is that Philip Morris USA has been working on the technologies that  
11 are now being used as a part of SCoR for years. However, the current project began in  
12 approximately December of 2000.

13 Q: Has Philip Morris USA developed any cigarette designs using SCoR technologies?

14 A: Yes. The technologies that are currently being developed are the first wave of what we  
15 hope will be many. We are currently using three different SCoR technologies, each of which are  
16 based on filtering harmful constituents through the use of an activated carbon filter.

17 Q: Have these SCoR technologies resulted in significant reductions of any of the  
18 potentially harmful compounds identified by the public health community?

19 A: Yes.

20 Q: Let me show you JD-050240. Does this document reflect some of the compounds  
21 which the SCoR technologies have significantly reduced?

22 A: Yes, as this document reflects, on pages 18-19, we have seen significant reductions in  
23 compounds such as acrolein, 1,3 butadiene, benzene and acetaldehyde.

1 Q: How would you characterize the progress Philip Morris USA has made in  
2 developing a product under the SCoR program?

3 A: I believe we have accomplished a great deal thus far, but we still have a long way to go.  
4 We still have to perfect a combination of technologies that shows reductions in potentially  
5 harmful compounds and, at the same time, has a taste that consumers will accept.

6 Q: Why does the taste need to be improved?

7 A: The activated carbon also filters out flavor. We are trying to improve the taste by  
8 developing various means of putting flavor back in during or after the filtration process.

9 Q: Is Philip Morris USA using any of these technologies in its cigarettes?

10 A: We are opening test markets with products that use various applications of these  
11 technologies to assess consumer acceptance of taste.

12 Q: How much money has Philip Morris USA spent on the SCoR program?

13 A: We have spent over \$170 million in five years just on the program.

14 Q: Is Philip Morris USA making any health claims regarding either the electrically  
15 heated cigarette or the cigarettes using SCoR technologies?

16 A: No.

17 Q: Why not?

18 A: Because we do not have sufficient evidence at this time to support health claims. Nor is  
19 there a regulatory body in place to establish standards for approving health claim  
20 communications to consumers. However, we are continuing to generate data which we hope will  
21 be useful in determining the appropriateness of health claims in the future.

22 Q: You mentioned that Philip Morris USA is attempting to develop methods to reduce  
23 the levels of TSNA's that exist in the tobacco we use to make cigarettes. What are TSNA's?

1 A: TSNAs are considered by public health officials to be harmful chemicals. Our scientists  
2 believe that a majority of TSNAs are actually formed during the curing process in a farmer's  
3 barn. We have been conducting a number of research projects with the goal of reducing these  
4 TSNAs.

5 Q: Has Philip Morris USA been successful in reducing TSNAs in its tobacco?

6 A: Yes. The flue-cured tobacco we now purchase has a 90 percent or more reduction versus  
7 the tobacco we used to purchase.

8 Q: What has Philip Morris USA done to reduce the TSNA levels in flue-cured tobacco?

9 A: In the late 1990s, we learned that TSNAs form in flue-cured tobacco during the curing  
10 process as a result of allowing combustion gases to be introduced directly into the barn. By  
11 modifying the curing barns from direct heating to indirect heating using heat exchangers,  
12 growers could greatly reduce TSNA levels. This required flue-cured tobacco farmers who were  
13 not already using heat exchangers to make modifications to their curing barns. Philip Morris  
14 USA contributed \$35 million to a pool of funds that provided grants to tobacco growers to cover  
15 the costs of converting their barns. We also require flue-cured tobacco growers to warrant that  
16 the tobacco we buy from them was cured in barns equipped with properly maintained heat  
17 exchangers to keep the tobacco from being exposed directly to combustion gases.

18 Q: What are some of the things that Philip Morris USA is doing to reduce the TSNA  
19 levels in burley tobacco?

20 A: We are researching improving agricultural practices, such as keeping tobacco dry,  
21 making sure that curing barns are well constructed, using techniques like seed cleaning, reducing  
22 elements of the processing time and controlling the temperature and humidity levels in barns.

23 D. DEVELOPMENT OF TESTS, PROCESSES AND PROTOCOLS



1 Q: You testified that a second part of Philip Morris USA's effort to reduce the harms  
2 associated with cigarette smoking is the development and implementation of new tests,  
3 processes, and protocols to help assess the degree of harm reduction achieved by these new  
4 technologies. Please explain to the Court what you mean by that.

5 A: This relates to everything we must do after we have developed a cigarette we believe is  
6 less hazardous. Developing a cigarette we believe may be less hazardous is only the first step in  
7 reducing harm. In addition to that, we must determine whether the cigarette actually reduces a  
8 smoker's exposure to harmful compounds under real-world conditions. We must also ensure that  
9 any claims regarding the product accurately communicate the implications of switching,  
10 including the fact that there is no "safe" cigarette and that the best option from a health  
11 perspective is to quit. Finally, after the product becomes available, we must continue to monitor  
12 smokers' behaviors and the long-term impact on health of the product to ensure that there are no  
13 unintended consequences.

14 Q: What is Philip Morris USA doing with respect to the evaluation of potentially less  
15 hazardous cigarettes?

16 A: We have developed a battery of tests for evaluating these products. This battery includes  
17 both standard toxicological tests, like the Ames mutagenicity test and rat inhalation studies, that  
18 have been available for years, as well as clinical studies with biomarkers that became available  
19 only recently. We are also conducting and funding additional research to improve these  
20 analytical tools and develop others that will permit us to evaluate better any potentially less  
21 hazardous cigarettes.

22 Q: What guidance, if any, has Philip Morris USA drawn from the IOM report about  
23 how it should evaluate potentially reduced exposure products?

1 A: The IOM report does not identify the exact tests that should be run. But it does provide  
2 parameters for the types of tests that should be run and the fact that one test is not sufficient to  
3 evaluate a product.

4 Q: Has Philip Morris USA attempted to evaluate any of its products based on the  
5 parameters provided in the IOM report?

6 A: Yes.

7 Q: What is Philip Morris USA doing in this regard?

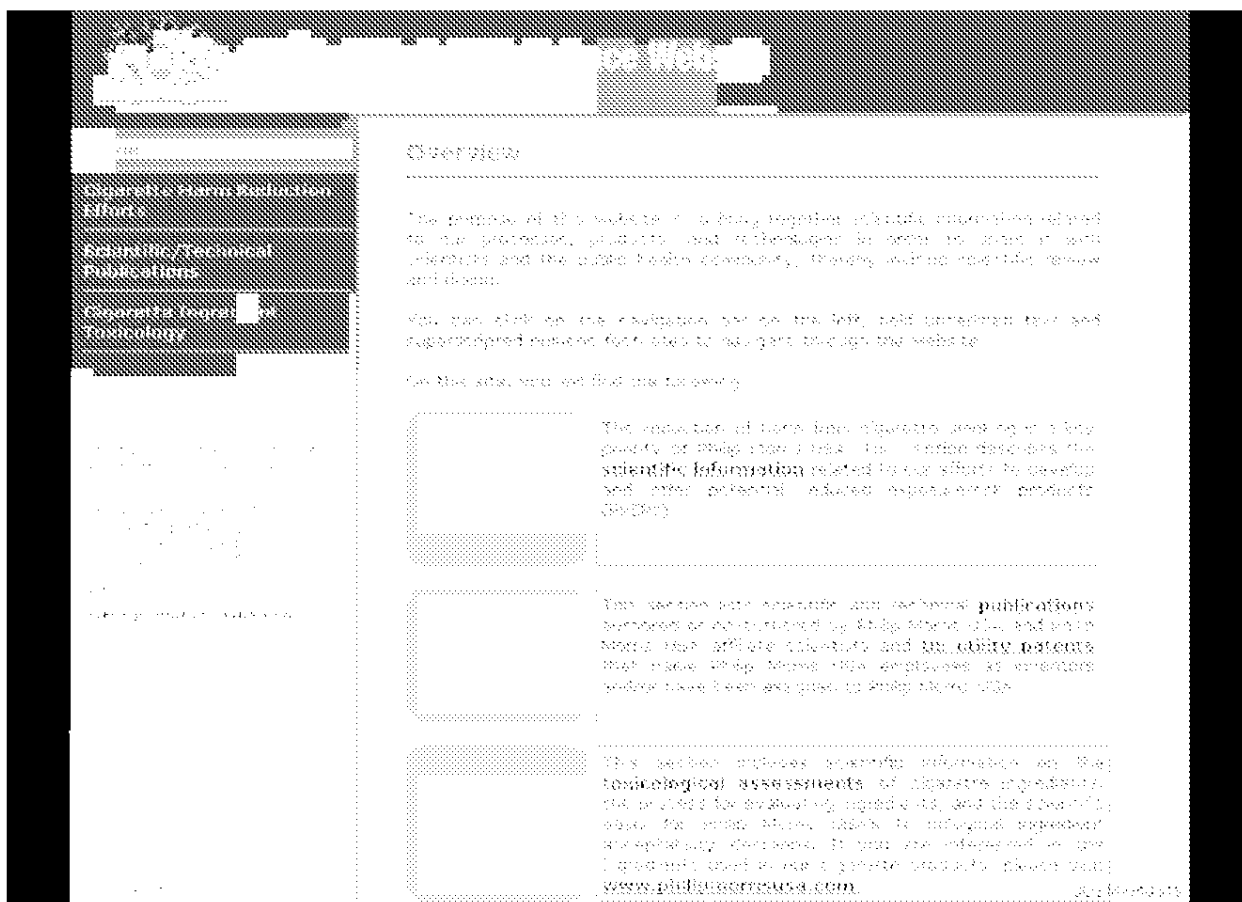
8 A: We are putting Accord and cigarettes incorporating SCoR technologies through the  
9 battery of tests I mentioned.

10 Q: Has Philip Morris USA made the results of these tests public?

11 A: Yes. Our scientists presented the results of toxicological testing on Accord at scientific  
12 meetings in the late 1990s, around the time we started test-marketing Accord. We have also  
13 published Accord tests results on our science website, [www.pmusa-science.com](http://www.pmusa-science.com), which was  
14 launched in the Spring of 2004. We also presented the results of toxicological and clinical  
15 studies on the SCoR technologies at a meeting of the Massachusetts Department of Public Health  
16 in Boston in early 2005.

17 Q: You just mentioned a science website. Let me show you JDEM-040319. What is  
18 this exhibit?

19 A: It is an image of the [www.pmusa-science.com](http://www.pmusa-science.com) homepage.



Q: What is [www.pmusas-science.com](http://www.pmusas-science.com)?

A: It is a website that we have created primarily for the scientific community to facilitate scientific review and dialogue.

Q: Turning back to the IOM report, which is JE-032485, could you turn to page seven of the Executive Summary. Please read Regulatory Principle 4?

A: "Manufacturers should be permitted to market tobacco-related products with exposure-reduction or risk-reduction claims only after prior agency approval based on scientific evidence (a) that the product substantially reduces exposure to one or more tobacco toxicants and (b) if a risk reduction claim is made, that the product can reasonably be expected to reduce the risk of one or more specific diseases or other adverse health effects, as compared with whatever

1 benchmark product the agency requires to be stated in the labeling. The 'substantial reduction' in  
2 exposure should be sufficiently large that measurable reduction in morbidity and/or mortality (in  
3 subsequent clinical or epidemiological studies) would be anticipated, as judged by independent  
4 scientific experts."

5 Q: Do you believe that Philip Morris USA can meet that standard right now with any  
6 of its products?

7 A: No.

8 Q: Why not?

9 A: For two reasons. First, there is no agency that has been vested with the power to pre-  
10 approve a claim of exposure reduction or risk reduction. That is one of the reasons Philip Morris  
11 USA has been advocating for FDA authority. Second, it is not yet clear that the reductions in  
12 certain chemicals from products like Accord and ones incorporating SCoR technologies are  
13 sufficiently large that independent scientific experts would anticipate a measurable reduction in  
14 morbidity and/or mortality, as the IOM framework would require.

15 Q: You also mentioned that Philip Morris USA is conducting and funding additional  
16 research relating to the evaluation of potentially less hazardous cigarettes. Please explain  
17 to the Court what those research efforts are.

18 A: It is my understanding that we have extensive research programs, both external and  
19 internal, that are focused on advancing our knowledge about tobacco smoke, including the  
20 compounds in smoke and smokers' actual exposure to them, to support our efforts to develop  
21 new product designs. These efforts include the Total Exposure Study and the Philip Morris  
22 External Research Program.

1 Q: What do these efforts have to do with developing products that reduce the harms  
2 associated with smoking?

3 A: There are still many gaps in scientific knowledge that prevent us from more accurately  
4 evaluating whether products can reduce the harms of smoking. In *Clearing the Smoke*, the IOM  
5 committee recognized the need for additional research to strengthen the scientific basis for  
6 assessing potentially less hazardous products and laid out a research agenda to fill those gaps.  
7 The research Philip Morris USA conducts and funds is designed to fill gaps identified by the  
8 IOM and other members of the public health community.

9 Q: What is the Total Exposure Study?

10 A: It is a long-term, clinical study of approximately 3,500 adult smokers of all brands across  
11 the entire range of FTC-measured yields and approximately 1,000 adult non-smokers. In the  
12 study, the smoking participants smoke different FTC-measured delivery products. Over long  
13 periods of time, the participants provide blood and urine samples -- which are analyzed to  
14 determine the exposure variation between smokers and non-smokers and between smokers of  
15 varying tar levels.

16 Q: Where is the study conducted?

17 A: It is my understanding that it is being conducted in several locations in various states.

18 Q: Has Philip Morris USA discussed the Total Exposure Study publicly with members  
19 of the public health community?

20 A: Yes. Our scientists have discussed the design and purpose of the Total Exposure Study at  
21 various meetings with members of the public health community, as well as at a meeting with the  
22 National Association of Attorneys General. In fact, one of our scientists gave a lengthy

1 presentation on the subject at a meeting with the Massachusetts Department of Public Health in  
2 2002.

3 Q: Let me show you JD-050206, JD-050141, JD-049338, JD-050093 and JD-055032.  
4 Are these examples of such presentations?

5 A: Yes, these documents are presentations made by members of the Philip Morris USA  
6 Research and Development Department. The first two were made to the Massachusetts  
7 Department of Public Health in 2000 and 2002, respectively. The third document is a  
8 presentation that was made to the WHO in 2000. The fourth document is a presentation made to  
9 the National Association of Attorneys General. The final document is a presentation made to the  
10 Centers for Disease Control in 2004.

11 Q: Have you encouraged your scientists to engage with the public health community on  
12 Philip Morris USA's reduced harm efforts?

13 A: Yes.

14 Q: Why?

15 A: Because we believe that we will be more effective in achieving our Mission goals if we  
16 engage with key stakeholders, such as members of the public health community.

17 Q: Turning back to the Total Exposure Study. Do these presentations describe the  
18 design and purpose of the study?

19 A: Yes. For example, pages 31-33 of the presentation to the National Association of  
20 Attorneys General, JD-050093, describes the study.

21 Q: How much money has Philip Morris USA spent so far to conduct the Total  
22 Exposure Study?

23 A: Approximately \$30 million.

1 Q: What is the Philip Morris External Research Program?

2 A: The External Research Program or ERP is a program that is set up to fund research  
3 relating to smoking and health issues. The research is conducted independent of Philip Morris  
4 USA.

5 Q: Why does Philip Morris USA need independent external research?

6 A: We believe we need to fund external research in order to learn about *smoking and health*  
7 issues regarding our products, including those risks related to cardiovascular disease, respiratory  
8 disease and cancer.

9 Q: How long has the ERP been in place?

10 A: The first request for applications was issued in the fall of 2000. The idea for the program  
11 originated in 1999.

12 Q: How is the External Research Program structured?

13 A: Philip Morris USA's only role in the ERP is to provide funding and a research agenda.  
14 An independent, outside scientific advisory board exclusively selects and approves for funding  
15 the research projects that are carried out by independent scientists.

16 Q: Let me show you JE-046061 and JD-043675. What are these documents?

17 A: They are the 2000 and 2001 Philip Morris USA ERP Requests for Application,  
18 respectively. On page 3 of each document, there is a more detailed explanation of the program,  
19 including an overview of the research agenda and the grant approval process.

20 Q: Does Philip Morris USA track the progress of the research funded by the ERP?

21 A: Yes.

22 Q: Let me show you JD-055034. What is this document?

1 A: It is a Philip Morris USA External Research Program Management Report, dated  
2 December 2004.

3 Q: Does this report reflect how many publications have resulted from research funded,  
4 in whole or in part, through the Philip Morris External Research Program?

5 A: Yes, on pages 8-26, it reports that, as of November 1, 2004, the total number of  
6 publications acknowledging support from the ERP was 179. In addition, as reported on pages  
7 27-69, there have been over 400 presentations given by researchers receiving funding through  
8 the ERP.

9 Q: Let me show you JD-050233. Please describe what the document is.

10 A: This is a summary of Philip Morris USA's spending on various research and development  
11 projects.

12 Q: Does this document set forth how much funding Philip Morris USA has committed  
13 so far for ERP research?

14 A: Yes, it does. As set forth on page PM 3002955909, Philip Morris USA has committed  
15 approximately \$120 million through the end of last year.

16 Q: You also mentioned that part of developing and implementing processes and  
17 procedures for assessing the degree of harm reduction achieved by new products is  
18 ensuring that any claims regarding the products accurately communicate the benefits.  
19 How is this relevant to reducing the harm associated with cigarette smoking?

20 A: Crafting appropriate claims regarding potentially reduced exposure products is an  
21 undertaking requiring great care and attention. We are mindful of the critical need to assure that  
22 marketing messages clearly communicate that all smoking can be harmful and that the best



option from a health perspective is to quit. The key here is for all communications to consumers to be truthful and not misleading in the context of the fact that there is no safe cigarette.

Q: Does the IOM report say anything about validation of consumer communications?

A: Yes. The IOM report contains Regulatory Principle 5, which would regulate all reduced exposure and reduced risk claims under the "not false or misleading" standard, with the burden of proof on the manufacturer, and would give an appropriate regulatory agency the power and resources to conduct its own surveys of consumer perceptions of the claims.

Q: Does Philip Morris USA support legislation that would authorize this type of regulation of claims made about potentially reduced exposure products?

A: Yes.

Q: Why?

A: As with the determinations regarding the scientific issues of potential exposure and risk-reduction, we believe that the best approach is for the FDA to decide what communications to consumers are appropriate on this subject.

Q: What has Philip Morris USA done to validate communications about its potentially reduced exposure products?

A: We are conducting consumer research on forms of communication about Accord and the products using SCoR technologies in a non-market environment. This work is on-going, however, because we have not yet decided that it is appropriate to make claims about these products.

Q: You testified that the final element of Philip Morris USA's harm reduction efforts is monitoring of smokers' behaviors and the long-term impact on health of the product to

1 ensure that there are no unintended consequences. Why does Philip Morris USA believe  
2 this to be an important part of reducing the harm to smokers?

3 A: It is important because even if we were able to develop a cigarette that public health  
4 authorities agree reduces a smoker's exposure to certain harmful substances and, at the same  
5 time, were able to communicate those attributes in such a way that consumers do not mistakenly  
6 believe that use of the product is an alternative to quitting from a health perspective, there is still  
7 the potential that risk-reduction from the product is offset by other factors, such as changes in  
8 smoking behavior, discouraging current smokers from quitting or encouraging nonsmokers to  
9 start. Surveillance efforts are designed to ensure that the consumer is using the product in a way  
10 that is consistent with how it should be used and to determine if unanticipated outcomes are  
11 occurring. These efforts also includes epidemiological studies to determine the effects of these  
12 products on long term mortality and morbidity.

13 Q: What, if anything, does the IOM report say about surveillance as part of a  
14 regulatory framework for harm reduction?

15 A: The IOM report includes Regulatory Principle 6, which would empower an appropriate  
16 regulatory agency to require any cigarette company that makes a health claim about a product to  
17 conduct post-marketing surveillance and epidemiological studies to determine the short-term  
18 behavioral and long-term health consequences of using the product.

19 Q: How has Philip Morris USA adopted Regulatory Principle 6?

20 A: Philip Morris USA is in the process of designing its surveillance program so we can run  
21 the appropriate surveillance testing required by the IOM report. Because the company has not  
22 yet made any claims about its new products, it has not had occasion to conduct such a program.

1 Q: As a wrap-up, how would you describe Philip Morris USA's progress in developing  
2 less hazardous cigarettes as it relates to the achievement of the company's Mission?

3 A: As I testified earlier, providing consumers with less harmful products is an important  
4 mission goal for the company. I have learned as we have pursued this mission goal that  
5 accomplishing it is a difficult and complex task. We have invested a substantial amount of  
6 money already, and we will continue to invest until we accomplish the goal. I believe we are  
7 making good progress and going about it the right way. However, until Congress gives the FDA  
8 the authority to define standards for these products and to determine what can be communicated  
9 to consumers regarding these products, it will be difficult to meet the challenge.

10 VIII. PHILIP MORRIS USA ENDORSES RESPONSIBLE FDA REGULATION

11 Q: Mr. Szymanczyk, earlier you mentioned that Philip Morris USA endorses  
12 responsible FDA regulation. Why does Philip Morris USA endorse responsible FDA  
13 regulation?

14 A: Because, as I just stated, we believe FDA regulation would help us achieve our Mission.

15 Q: How would FDA regulation help you achieve your Mission?

16 A: Federal legislation that includes granting FDA authority to regulate tobacco products  
17 could provide guidance on many of the complex tobacco issues that concern the public, the  
18 public health community and Philip Morris USA.

19 Q: Has Philip Morris USA taken any action to demonstrate its support of FDA  
20 regulation?

21 A: For the last several years, Philip Morris USA has supported the passage of legislation that  
22 would give the FDA meaningful and effective authority to regulate tobacco products. We  
23 believe FDA regulation would provide consistency in tobacco policy, more predictability for the

1 tobacco industry and an effective means of addressing issues that are of concern to our company,  
2 our consumers and society. So we have supported legislation that would confer that sort of  
3 authority.

4 Q: Mr. Szymanczyk, has there been activity very recently in Congress regarding  
5 proposed FDA regulation of tobacco?

6 A: Yes, there was a very significant development on March 17 of this year.

7 Q: What was that?

8 A: Senator DeWine of Ohio and Senator Kennedy of Massachusetts introduced a bill in the  
9 Senate. And Representative Henry Waxman of California and Representative Thomas Davis of  
10 Virginia introduced a bill in the House.

11 Q: Are you familiar with these two bills?

12 A: Yes.

13 Q: What are the major provisions of these bills?

14 A: The bills would give the FDA

- 15 • Authority to change the language of the current cigarette health warnings and  
16 substantially enlarge their size;
- 17 • Full disclosure of ingredients added to tobacco products;
- 18 • Authority for the FDA to regulate, or ban, terms such as "light" and "low tar";
- 19 • Authority for the FDA to mandate changes in the design of tobacco products to  
20 protect the public health, including authority to remove harmful ingredients and  
21 smoke constituents;
- 22 • Authority for the FDA to do more to prevent minors from using tobacco products;
- 23 • Authority to establish standards for products that could potentially reduce the harm  
24 caused by smoking and define the appropriate ways to communicate about these  
25 products; and
- 26 • A ban on the sale of candy and fruit-flavored cigarettes.

1 Q: Has Philip Morris USA taken any position regarding the proposed legislation?

2 A: Yes, on the same day the bills were introduced into Congress, we issued a press release

3 expressing our full support for both the Senate version and the House version.

4 Q: Did Philip Morris express any reservations about the bills?

5 A: No.

6 Q: Did Philip Morris say that it only supported parts of the bills?

7 A: No. We made very clear that we support the bills in their entirety.

8 Q: Was this the first time bills to grant FDA the authority to regulate tobacco were

9 introduced with Congress?

10 A: No. These same sponsors introduced bills last year, but they were not enacted into law.

11 The bills introduced last year were very similar to the bills introduced this month.

12 Q: What was the legislation that was proposed?

13 A: In May, 2004, Senators Kennedy and DeWine introduced the Family Smoking

14 Prevention and Tobacco Control Act. It was a bipartisan bill that would have provided the FDA

15 with regulatory authority over tobacco products.

16 Q: Showing you JD-049372, are you familiar with these documents?

17 A: Yes, I am. They are copies of both the House and Senate versions of the bill that was

18 introduced in 2004. The Senate version of the bill was passed at the end of 2004.

19 Q: Who were the sponsors of the 2004 version of the Senate bill?

20 A: Senators DeWine and Kennedy.

21 Q: Showing you JD-053380, are you familiar with this document?

22 A: Yes I am.

23 Q: What is it?

1 A: It is a letter from myself to Senators DeWine and Kennedy expressing Philip Morris  
2 USA's support for their legislation.

3 Q: Is this your signature?

4 A: Yes it is.

5 Q: Showing you JD-053381, are you familiar with this document?

6 A: Yes I am.

7 Q: What is it?

8 A: This is the same letter, only I have sent it to House Representatives Henry Waxman and  
9 Thomas Davis. We sent it to them supporting an identical FDA bill they have introduced in the  
10 House of Representatives.

11 Q: Is this your signature?

12 A: Yes, it is.

13 Q: Turning to JD-053381, could you please read the first two paragraphs of the letter?

14 A: "We at Philip Morris USA are pleased with the introduction of your bipartisan legislation  
15 to give the Food and Drug Administration authority to regulate tobacco products and view it as  
16 an historic event. This bill would establish, for the first time, a comprehensive and coherent  
17 national tobacco policy in this country. As I said in my Congressional testimony, first in 2002,  
18 and again last year, this regulation would mark the beginning of a new and much better chapter,  
19 the most important and positive to date, in the effort of society as a whole to come to a place  
20 where it feels certain that tobacco products and the tobacco industry are properly regulated."

21 Q: Could you please read the fourth paragraph?

1 A: "We fully endorse this bill in its entirety and thank you for taking a leadership role in this  
2 important initiative which establishes clear rules for the tobacco industry that will apply to all  
3 industry participants and be enforced uniformly."

4 Q: So, Philip Morris USA supported the Kennedy/DeWine bill as proposed?

5 A: Yes.

6 Q: Did any public health groups support this legislation?

7 A: Yes. The Campaign for Tobacco Free Kids, the American Cancer Society and I believe  
8 other public health groups supported the legislation.

9 Q: Did your letter to Senator's Kennedy and DeWine discuss the reasons Philip Morris  
10 USA supported this legislation?

11 A: Yes.

12 Q: Turning back to JD-053381, could you please read the passage below the heading  
13 "Among the bill's many important features are:" ?

14 A: FDA would be given the authority to impose performance standards for the design and  
15 manufacture of cigarettes in order to reduce the harm caused by smoking. Under the bill, FDA  
16 would consider whether a new performance standard would significantly increase the demand for  
17 contraband cigarettes. We believe this is a significant consideration in order to prevent the  
18 unintended consequence of black market cigarettes. It is also important that the bill provides that  
19 FDA cannot ban the sale of cigarettes to adults.

- 20 • The bill would change the language of the current health warnings, substantially  
21 enlarge their size and authorize FDA to require new warnings in the future. The  
22 bill would not, however, substantially change the Supreme Court's rulings  
23 regarding the product liability implications of compliance with warning  
24 requirements.

- 1           • The bill would authorize FDA as well as states and localities to regulate the time,  
2           place and manner of cigarette advertising and promotion, consistent with the First  
3           Amendment's protection of commercial free speech to adults.
- 4           • The bill provides that FDA's cigarette product standards would be consistent on a  
5           nationwide basis.
- 6           • FDA would be given the authority to combat the existence of counterfeit,  
7           contraband and other illicit tobacco products.
- 8           • The bill contains a number of other provisions that will benefit the public health  
9           and provide important oversight for all tobacco manufacturers. For example,  
10          FDA would be authorized to:
  - 11           • conduct educational efforts regarding the dangers of tobacco use.
  - 12           • take new steps to curb underage tobacco use,
  - 13           • strictly regulate new tobacco products that may reduce the risk of disease or  
14           exposure to harmful compounds in cigarette smoke, and
  - 15           • ensure that tobacco products are not adulterated.

16   Q:     Is Philip Morris USA's support for FDA regulation a new development?

17   A:     No. In fact, Philip Morris USA has supported FDA regulation for some time now.

18   Q:     How has Philip Morris USA communicated its support for FDA regulation?

19   A:     In the Spring of 2000 we publicly supported regulation of tobacco products by the federal  
20   government. On March 22, 2001, we publicly released a position paper informing the 107th  
21   Congress of Philip Morris USA's support for FDA regulation. I have appeared three times  
22   before certain Congressional committees to voice Philip Morris USA's support of FDA  
23   regulation. I have also submitted written statements before Congressional committees voicing  
24   Philip Morris USA's support for FDA regulation. In 2004, the Senate passed a bill that conferred  
25   the FDA with regulatory authority over tobacco products.

26   Q:     Has Philip Morris USA engaged in any other efforts to support FDA regulation?

27   A:     Yes, Philip Morris USA has supported other legislation that would have provided the  
28   FDA with the authority to regulate tobacco products.



1 Q: What was the legislation?

2 A: In 2002 Senators Kennedy and DeWine sponsored legislation that would have conferred  
3 the FDA with regulatory authority over tobacco products. That same year, a bill had been  
4 proposed in the House by Representatives Davis and McIntyre. It would have provided  
5 regulation as well.

6 Q: Did Philip Morris USA support these pieces of legislation?

7 A: Philip Morris USA supported the Davis/McIntyre legislation. We also believed that the  
8 2002 Kennedy/DeWine bill was the right approach, although we did not agree with every  
9 provision. However, we thought there was more than enough common ground in the legislation,  
10 and had hoped to work with Congress to secure its passage into law.

11 Q: What was Philip Morris USA's role in the process?

12 A: We were not invited to appear at a hearing before the Senate Health, Education, Labor  
13 and Pensions Committee. However, Philip Morris USA thought it was appropriate to weigh in on  
14 the issue of FDA regulation so we submitted a position paper on the subject.

15 Q: Why did you think it was appropriate that you be included?

16 A: We wanted to be involved for many of the reasons that we supported regulation in the  
17 first place. We have a lot of expertise to offer. We feel it is important that we stay involved in  
18 this issue because FDA regulation is a matter of great importance.

19 Q: Showing you JD-050295, do you recognize this document?

20 A: Yes, this is the paper that I submitted to the Senate Health, Education, Labor and  
21 Pensions Committee in support of FDA regulation.

22 Q: Is it a true and accurate copy of the statement you submitted?

23 A: Yes.

1 Q: Did you do anything to support the Davis/McIntyre bill you just mentioned?

2 A: On September 26, 2002, I appeared before the Specialty Crops Subcommittee of the  
3 House Agriculture Committee. I testified and submitted a written statement in support of the  
4 McIntyre/Davis legislation. I was offering Philip Morris USA's support.

5 Q: Showing you JD-050044 do you recognize this document?

6 A: Yes this is a statement I submitted to the Specialty Crops Subcommittee of the House  
7 Agricultural Committee.

8 Q: Is this a true and accurate copy of the statement you submitted?

9 A: Yes.

10 Q: What did the McIntyre/Davis bill provide.

11 A: It had two main provisions. The first provision relates to a tobacco quota buyout plan.  
12 The bill proposed replacing the current Federal system with a program that will provide market  
13 stability by limiting the production of tobacco leaf to countries where it is currently grown. The  
14 second provision in the bill would have conferred regulatory powers on the FDA.

15 Q: Now, neither of these bills were enacted into law, were they?

16 A: No.

17 Q: Are there any other committees you have appeared before in support of FDA  
18 regulation?

19 A: On June 3, 2003, I testified and submitted a written statement to the House Government  
20 Reform Committee regarding reduced exposure and reduced risk tobacco products. My  
21 statement advocated regulation, specifically regulation that touches on reduced risk products. I  
22 also provided a similar statement on that same day to the House Subcommittee on Commerce,  
23 Trade and Consumer Protection of the House Energy and Commerce Committee. On July 24,

1 2003, I submitted a written statement and testified before the House Agricultural Committee  
2 regarding another bill drafted by Representatives McIntyre and Davis that would have given the  
3 FDA regulation over tobacco products.

4 Q: Why did you testify?

5 A: Because I believe that reasonable regulation is in everyone's interest. FDA regulation  
6 would allow for determinations that are based on the best available scientific information, which  
7 will encourage innovation and competition.

8 Q: Let me show you JD-054053. Do you recognize this document?

9 A: Yes, this is a my testimony before the House Committee on Government Reform on June  
10 3, 2003.

11 Q: Do you remember who was in attendance that day?

12 A: A number of Congressmen as well as other speakers who were appearing to air their  
13 views on the legislation.

14 Q: Were Representatives Tom Davis and Henry Waxman present?

15 A: Yes, they were.

16 Q: Showing you JD-054053. Please turn to page 293, does this reference how  
17 Representative Davis characterized your appearance before the Committee?

18 A: Yes.

19 Q: How did Representative Davis characterize your appearance before the Committee?

20 A: He called it historic.

21 Q: Turning to page 319, does the highlighted text reference a statement by  
22 Representative Waxman regarding Representative Waxman's views and the views of Philip  
23 Morris USA?

1 A: Yes.

2 Q: What did Representative Waxman say?

3 A: He said that it would be historic for he and Philip Morris USA to agree regarding FDA  
4 regulation.

5 Q: Referring back to JD-053381, your letter to Representatives Davis and Waxman,  
6 could you please read the fourth paragraph?

7 A: "We fully endorse this bill in its entirety and thank you for taking a leadership role in this  
8 important initiative which establishes clear rules for the tobacco industry that will apply to all  
9 industry participants and be enforced uniformly."

10 Q: If tobacco products are ultimately regulated what affect will it have on the practices  
11 of the tobacco industry?

12 A: We believe that regulation will provide greater consistency in tobacco policy, more  
13 predictability for the industry and an effective way to address issues that are of concern for our  
14 company and society. However, regulation will require the implementation of Good  
15 Manufacturing Practices. Regulation will also bring potential changes in ingredients, packaging,  
16 advertising and promotion and new requirements for bringing products to the marketplace.

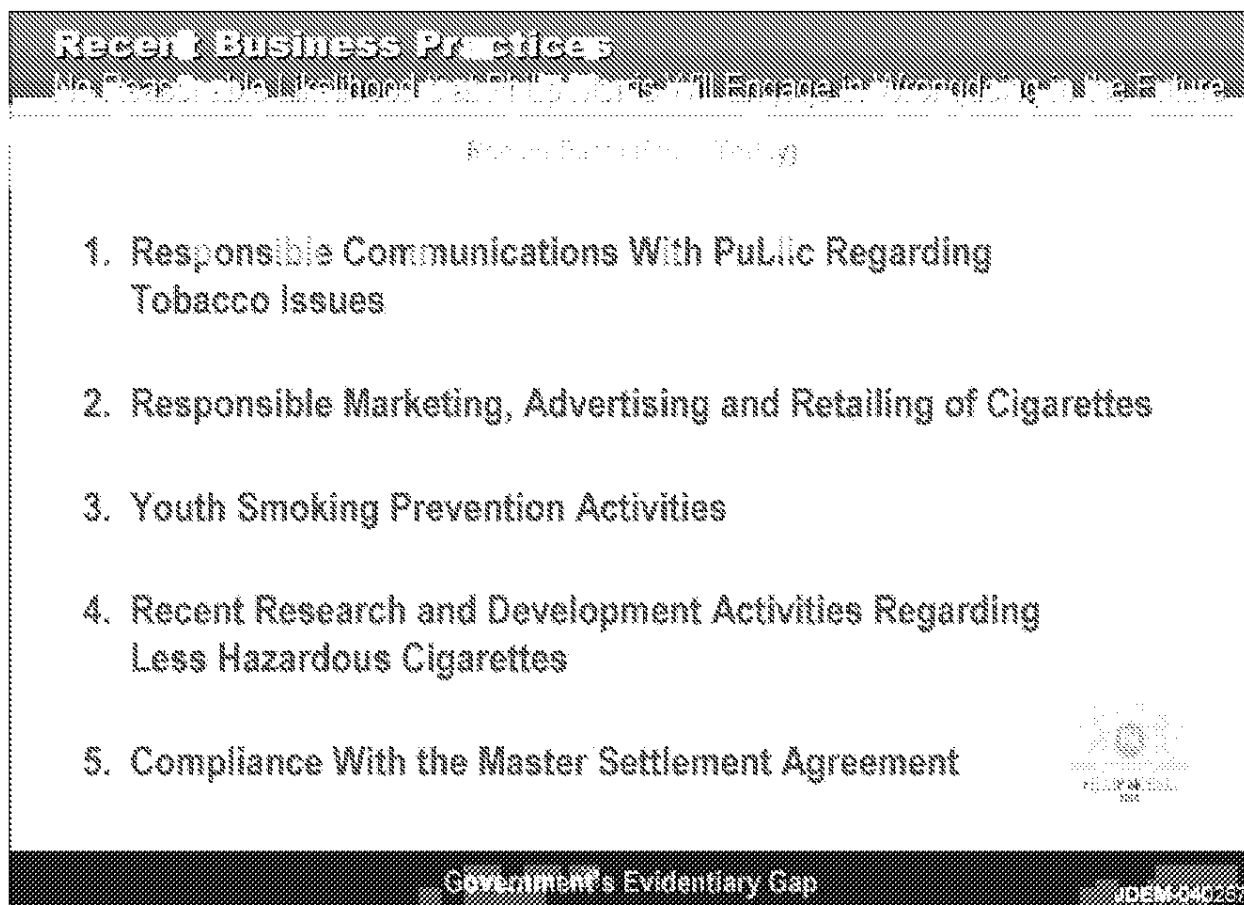
17 Q: Is Philip Morris USA prepared for these changes and requirements?

18 A: We have been designing and implementing systems and training personnel since 1997 in  
19 those areas that will potentially be affected by regulation. We believe that if FDA regulation  
20 becomes a reality these efforts will not only improve our business practices in our current  
21 environment, but will advance our ability to respond to FDA regulation in the future.

22 IX. PHILIP MORRIS USA HAS COMPLIED WITH THE REQUIREMENTS OF  
23 THE MSA

24 A. REGULATION OF CONDUCT UNDER MSA

- 1 Q: Turning back to our recent business practices chart, JDEM-040287, the last point  
2 states "Compliance with the Master Settlement Agreement," correct?  
3 A: Yes.



- 4  
5 Q: As far as the bottom line of Philip Morris USA's compliance with the MSA -- let me  
6 ask you this question. At any time since the inception of the MSA, has any attorney general  
7 ever brought an enforcement action against Philip Morris USA?  
8 A: No, not at any time.  
9 Q: As far as MSA compliance, I want to ask you some questions that detail for the  
10 Court the regulation of tobacco company conduct that is provided for under the terms of  
11 the MSA. Do you recall our prior discussion regarding the fact that the MSA regulates the

1 conduct of its signatories and that some of those regulations relate to advertising and  
2 marketing?

3 A: Yes..

4 Q: To recap, what are the categories of advertising and marketing restrictions that are  
5 regulated under the MSA?

6 A: The regulations prohibit billboard advertisements, outdoor advertising, cartoons, brand  
7 name merchandise, transit advertising, sampling, product placement and limits us to one brand  
8 name sponsorship.

9 Q: And you earlier testified that Philip Morris USA has complied with and in some  
10 instances gone beyond the advertising and marketing requirements of the MSA, correct?

11 A: Yes.

12 Q: Does the MSA contain provisions that impose any other requirements that you have  
13 not yet discussed?

14 A: Yes.

15 Q: What are some of those requirements?

16 A: There are provisions that require the signatory tobacco companies to pay money to the  
17 states. There are also provisions that impose certain conduct requirements that are unrelated to  
18 advertising and marketing. There are also provisions requiring that certain organizations cease  
19 operations and provisions that dictate the enforcement and investigative powers of the Attorneys  
20 General.

21 Q: Who gets the money paid by the tobacco companies under the MSA?

22 A: The states.

23 Q: How often are these payments made to the states by the tobacco companies?

1 A: Generally, once a year.

2 Q: For how long?

3 A: Forever, as long as we are in business.

4 Q: Can you generally describe how the amounts are calculated that the tobacco

5 companies pay the states under these agreements?

6 A: It is based on volume of cigarettes sold by each company during a given year.

7 Q: So the payments can vary?

8 A: Yes.

9 Q: How do they vary, in practical terms?

10 A: The more a company sells in volume, the more they pay.

11 Q: Is there an inflation adjustment?

12 A: Yes. The amount we pay is inflated each year by the greater of the Consumer Price Index

13 increase or by 3 percent.

14 Q: Are the calculations made on a company-by-company basis?

15 A: Yes.

16 Q: And the amount of payments can vary from year to year to some extent?

17 A: Yes.

18 Q: Since it signed the MSA, approximately what percent of the payments made by the

19 tobacco companies has been paid by Philip Morris?

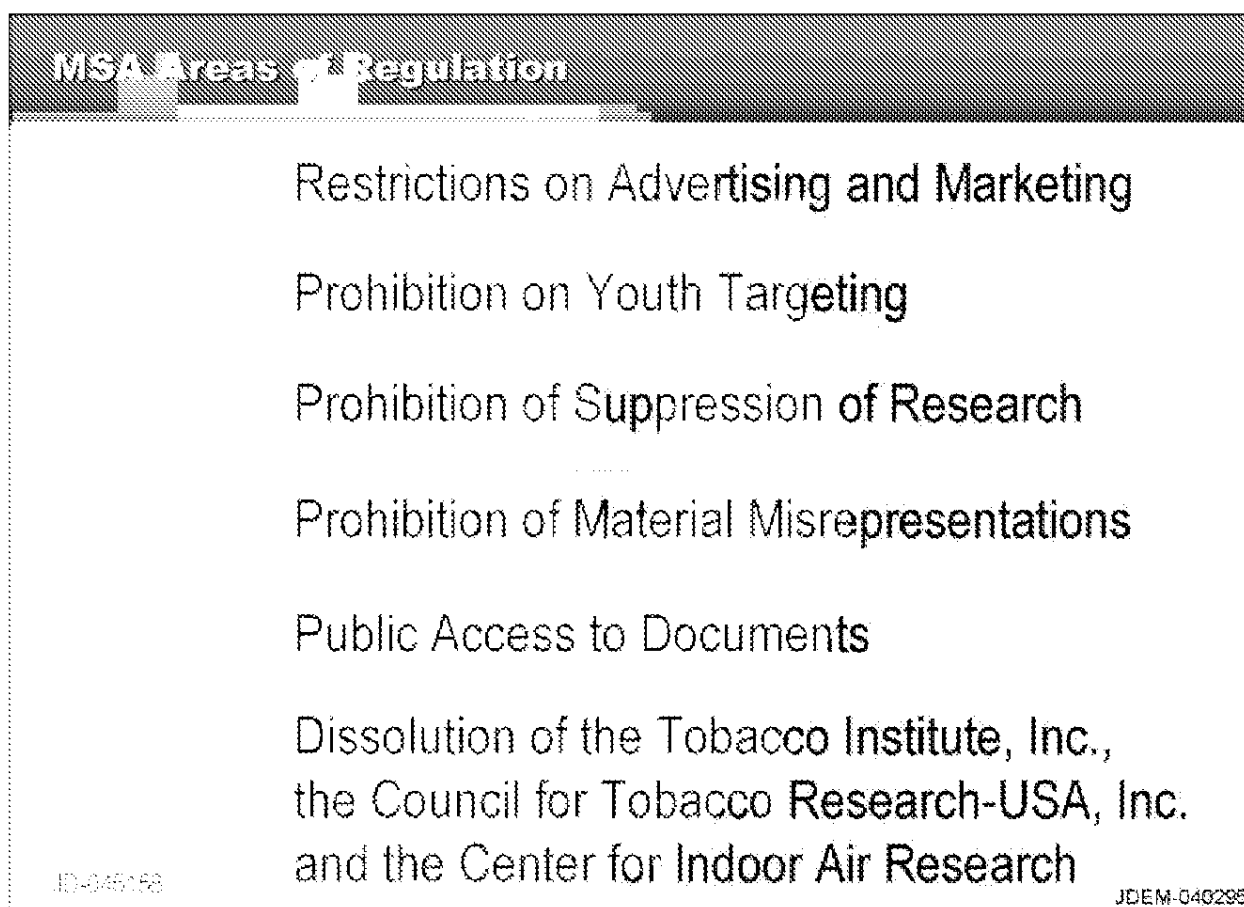
20 A: Approximately 50 percent.

21 Q: How much money has been paid to the states under the MSA by Philip Morris?

22 A: The payments have already totaled more than \$30 billion through April 2005 and will

23 likely total hundreds of billions of dollars over the life of the agreement.

1 Q: I would like to focus on the areas of regulation under the MSA, that we have not  
2 discussed. Turning back to our chart listing the major areas of regulation under the MSA,  
3 JDEM-040295, could you please read the third bullet point?  
4 A: "Prohibition of Suppression of Research."



5  
6 Q: What is this referencing?  
7 A: There are specific provisions of the MSA that prohibit the tobacco companies from  
8 suppressing research results.  
9 Q: Are you generally aware that the DOJ has alleged that the tobacco companies  
10 fraudulently suppressed and concealed internal scientific research results from the public?  
11 A: Yes.



1 Q: Directing your attention to paragraph ¶ III(q), pp. 35-36 of the MSA. What does  
2 this paragraph provide?

3 A: This is the section prohibiting tobacco companies from suppressing research regarding  
4 smoking and health issues. It provides as follows: "No Participating Manufacturer may enter  
5 into any contract, combination or conspiracy with any other Tobacco Product Manufacturer that  
6 has the purpose or effect of: (1) limiting competition in the production or distribution of  
7 information about health hazards or other consequences of the use of their products; (2) limiting  
8 or suppressing research into smoking and health; or (3) limiting or suppressing research into the  
9 marketing or development of new products."

10 Q: Is Philip Morris USA governed by this provision?

11 A: Yes.

12 Q: Let me direct your attention to the next item on the chart -- Prohibition of Material  
13 Misrepresentations. Please direct your attention to Section ¶ III(r) on page 36 of the MSA.  
14 What is this paragraph?

15 A: This paragraph prohibits the tobacco companies from making any material  
16 misrepresentations regarding smoking and health issues. It provides as follows: "No  
17 Participating Manufacturer may make any material misrepresentation of fact regarding the health  
18 consequences of using any Tobacco Product, including any tobacco additives, filters, paper or  
19 other ingredients."

20 Q: Therefore, under the terms of the MSA, could a tobacco company, in the future,  
21 ever make any material misrepresentations regarding the subject matters of disease  
22 causation, addiction, low delivery cigarettes, ETS or any other smoking and health issue?

23 A: No.

1 Q: What would happen if one of the tobacco companies violated the MSA and  
2 suppressed research or made a material misrepresentation regarding a smoking and health  
3 issue?

4 A: There are mechanisms in place that would allow the Attorneys General to take that  
5 company to court.

6 Q: What are the available penalties?

7 A: A court can order a party to comply with the MSA. If the party does not comply with the  
8 enforcement order, then a Court can order monetary, civil contempt or criminal sanctions.

9 Q: Turning back to the chart referencing the major area of regulations JDEM-040295,  
10 what is the fourth item?

11 A: "Prohibition on Youth Targeting."

12 Q: In order to show the Court how broad the youth targeting prohibition is, let me  
13 direct your attention to the specific language in the MSA. Would you please look at  
14 Paragraph III(a) on pages 18 and 19 of the MSA, and tell us what that provides.

15 A: This paragraph provides as follows: "No Participating Manufacturer may take any  
16 action, directly or indirectly, to target Youth within any Settling State in the advertising,  
17 promotion or marketing of Tobacco Products, or take any action the primary purpose of which is  
18 to initiate, maintain or increase the incidence of Youth smoking within any Settling State."

19 Q: Would you please explain to the Court how active the Attorneys General have been  
20 in interacting with Philip Morris USA regarding the youth targeting prohibition?

21 A: Yes. Because this language is so broad and all-encompassing, the Attorneys General are  
22 very active in interacting with Philip Morris USA to make certain that our business practices are

1 in complete compliance with this MSA provision. I will give some concrete examples a little  
2 later in my testimony.

3 Q: Turning back to our chart listing the major areas of regulation under the MSA,  
4 what is the fifth point, "Public Access to Documents," JDEM-040295, referencing?

5 A: The MSA contains provisions that ensure public access to internal company documents  
6 produced in connection with litigation.

7 Q: And have you prepared a chart that summarizes the Settlement Agreement  
8 provisions regarding public access to tobacco industry documents?

9 A: I have.

10 Q: Let me show you JDEM-040301. What does this chart summarize?

11 A: The provisions of the MSA that relate to tobacco industry documents being made public.

## Public Access to Tobacco Documents

1. Public Document Library
2. Documents Made Available on the Internet
3. Document Library and Internet Site Updated



JD-C-40158

JDEM-040301

Q: Let me refer you to the first bullet point on this chart -- "Public Document Library" -- what is the meaning of this bullet point?

A: This references the Minnesota Settlement Agreement and the court order approving it. Under the settlement we are required to pay for and maintain a public document depository or library in Minneapolis. The documents are placed in the library so they are accessible to anyone who wants to review them.

Q: Is the library open to the public?

A: Yes.

Q: And who pays to maintain that library?

A: Philip Morris USA, and other signatories to the Minnesota Settlement Agreement.

1 Q: Let me move to the second bullet point on the chart -- "Documents made available  
2 on the Internet." What does that provision reference?

3 A: The documents contained in the Minnesota library have to be displayed on the Internet.

4 Q: What is the effect of posting these documents on the Internet?

5 A: Not everyone can make it to Minnesota so it increases the availability of the documents  
6 to the general public.

7 Q: To the best of your knowledge are the documents that the Plaintiff is presenting in  
8 this case now available to the public in that public library and on the Internet?

9 A: That's correct.

10 Q: Who is paying to place and maintain these documents on the Internet?

11 A: Philip Morris USA, and the other United States tobacco manufacturers who are  
12 defendants in this case.

13 Q: Turning to the third bullet point on this chart -- "Document Library and Internet  
14 Site Updated." What is this referencing?

15 A: Under the MSA, all new and current business documents that are produced in litigation  
16 have to be put into the public library and on the Internet.

17 Q: Why is this required under the MSA?

18 A: The purpose of this provision is to ensure that the information known by the tobacco  
19 companies is available and readily accessible to the public.

20 Q: Has Philip Morris USA complied with this provision?

21 A: Yes, we have.

22 B. INDUSTRY ORGANIZATIONS SHUT DOWN

1 Q: Earlier you referenced that the MSA required the industry to shut down certain  
2 organizations, correct?

3 A: Yes

4 Q: What was provided under the MSA on this subject?

5 A: There are certain provisions in the MSA that required the tobacco companies to shut  
6 down certain organizations with which they were affiliated.

7 Q: Are you familiar with a tobacco industry organization by the name of the Tobacco  
8 Institute?

9 A: I am.

10 Q: What was the Tobacco Institute?

11 A: A trade organization that represented the tobacco industry.

12 Q: Are you generally aware that the Government has alleged that the tobacco  
13 companies improperly used the Tobacco Institute to make false statements about the health  
14 affects of cigarette smoking?

15 A: Yes.

16 Q: And what did the MSA require the tobacco companies to do regarding the Tobacco  
17 Institute?

18 A: The Tobacco Institute had to be shut down and it had to cease all operations.

19 Q: Have the Tobacco Institute's operations been closed down by the tobacco  
20 companies?

21 A: Yes, they have.

22 Q: When was TI shut down?

1 A: It is my understanding that it ceased operations in 1998, and was shut down in January  
2 1999. A certificate of dissolution was completed in 2000.

3 Q: Do you recognize the Council for Tobacco Research or CTR?

4 A: Yes I do.

5 Q: What was CTR?

6 A: It was an organization that funded scientific research related to smoking issues.

7 Q: Who funded that organization?

8 A: The tobacco companies.

9 Q: Are you generally aware that the Government has alleged that the tobacco  
10 companies used the Council for Tobacco Research improperly to carry out misleading or  
11 ineffective scientific research?

12 A: I am.

13 Q: Does the MSA impose any requirements regarding CTR?

14 A: It required the MSA signatories to shut down CTR.

15 Q: And has the Council for Tobacco Research been shut down?

16 A: Yes.

17 Q: When was CTR shut down?

18 A: It is my understanding that CTR was dissolved in 1998.

19 Q: So today, do the tobacco companies have any industry-wide common scientific  
20 research organization?

21 A: They do not and have not for the last several years.

22 Q: But as we discussed earlier, Philip Morris USA still conducts its own research and  
23 development in the area of smoking and health, correct?

1 A: Yes it does.

2 Q: Are you familiar with an organization called the Center for Indoor Air Research or

3 CIAR?

4 A: Yes I am.

5 Q: What was that organization?

6 A: It was an organization that funded indoor air research.

7 Q: Who funded that organization?

8 A: The tobacco companies.

9 Q: Are you generally aware that the Government has alleged that the tobacco

10 companies used CIAR to improperly to carry out misleading or ineffective scientific

11 research?

12 A: Yes.

13 Q: And what did the MSA require as far as CIAR is concerned?

14 A: The MSA did not require that CIAR be dissolved immediately. It had to be shut down

15 after the MSA received final approval.

16 Q: And have the tobacco companies shut down the operation of CIAR?

17 A: They have.

18 Q: When was CIAR shut down?

19 A: It is my understanding that it was dissolved at the end of 1999 after enough states gave

20 final approval of the MSA.

21 C. OVERSIGHT AND ENFORCEMENT PROVISIONS OF MSA

22 Q: You have also testified that the MSA allocates certain powers to the Attorneys

23 General, correct?



1 A: That is correct.

2 Q: What powers are allocated under the MSA?

3 A: There are provisions of the MSA that give the Attorneys General the power to oversee  
4 and enforce the agreement.

5 Q: Does the MSA have provisions that authorize the Attorneys General to enforce the  
6 MSA?

7 A: Yes. The Attorneys General have the power to enforce the MSA in court.

8 Q: How can the Attorneys General enforce the MSA in court?

9 A: In all 50 states, the MSA or individual state settlement agreements have been  
10 incorporated into a court order. Those orders provide the courts with jurisdiction over  
11 enforcement actions regarding violations of the MSA. If an Attorney General believes there is a  
12 violation, the Attorney General can bring that matter to the attention of the court that has the  
13 case. The court could then impose sanctions against the tobacco company and order the  
14 company to stop violating the Master Settlement Agreement.

15 Q: Do the Attorneys General monitor Philip Morris USA's compliance with the MSA?

16 A: Yes. The MSA provides that NAAG must coordinate and facilitate the MSA's  
17 implementation and enforcement by the states.

18 Q: Do the Attorneys General have sufficient financial resources to carry out its  
19 enforcement activities?

20 A: Yes. To ensure that the State Attorneys General have sufficient resources to monitor  
21 Defendants' business practices, to enforce the MSA's conduct restrictions and, if necessary, to  
22 bring enforcement actions, the MSA required the state attorneys general to establish a fund to be  
23 known as "The States' Antitrust/Consumer Protection Tobacco Enforcement Fund."

1 Q: How large is the fund?

2 A: Philip Morris USA, R.J. Reynolds, Brown & Williamson and Lorillard have paid a total  
3 of \$50 million to this fund.

4 Q: This money is for the sole purpose of allowing the Attorneys General to monitor and  
5 enforce the MSA?

6 A: That is its purpose.

7 Q: Do the Attorneys General coordinate their enforcement activities?

8 A: Yes. The MSA provides for National Association of Attorneys General to coordinate and  
9 facilitate the enforcement of the MSA.

10 Q: Let me direct your attention to Section VIII of the MSA, at page 53, entitled  
11 "Certain Ongoing Responsibilities of the Settling States," could you please explain what  
12 this provision is?

13 A: This is the provision that provides for the National Association of Attorneys General to  
14 coordinate the oversight and enforcement of the MSA.

15 Q: To your knowledge, is the National Association of Attorneys General coordinating  
16 the oversight and enforcement of the MSA, as set forth in Section VIII of the MSA?

17 A: Yes.

18 Q: Do the Attorneys General monitor the companies' compliance with their obligations  
19 to maintain document websites?

20 A: Yes. As part of their general oversight responsibilities, the Attorneys General monitor  
21 the document web sites the companies set up and make sure the companies are following the  
22 terms of the MSA that govern those web sites.

23 Q: Does the MSA grant the Attorneys General investigative powers ?

1 A: Yes. Under Section VII, if the Attorneys General believe that Philip Morris USA was  
2 violating the MSA, they have the power to interview employees and inspect our documents.

3 D. THE ATTORNEYS GENERAL ACTIVELY MONITOR PHILIP MORRIS  
4 USA'S COMPLIANCE WITH THE MSA

5 Q: You have testified that the National Association of Attorneys General is responsible  
6 for oversight and enforcement of the MSA. Could you explain how the National  
7 Association of Attorneys General oversees the activities of Philip Morris USA?

8 A: The National Association of Attorneys General has a committee of Attorneys General  
9 oversee MSA enforcement issues and employs attorneys and support staff who work on MSA  
10 enforcement matters full-time. The names and compositions of the people and committees have  
11 changed over time. Many states, including California, also devote additional resources to MSA  
12 enforcement.

13 Q: Earlier we discussed the fact that there are periodic meetings with the Attorneys  
14 General, correct?

15 A: Yes. We have frequent informal meetings and phone conversations with the Attorneys  
16 General on an ongoing basis. In addition, Section VIII(a)(2) at page 53 of the MSA requires that  
17 NAAG convene a minimum of two meetings per year to discuss enforcement and other topics  
18 they deem appropriate. In addition, NAAG is required to hold one major conference every three  
19 years.

20 Q: Is there a name used to describe the major conference?

21 A: Yes, it is called Triennial Conference.

22 Q: Who participates in the Triennial Conference?

23 A: The Attorneys General of the Settling States, the directors of the American Legacy  
24 Foundation and three persons designated by each Participating Manufacturer participate.

1 Q: What are these meetings and conferences intended to achieve?

2 A: The purpose is to evaluate the success of the MSA and coordinate efforts by the state  
3 Attorneys General and participating manufacturers to help reduce youth smoking.

4 Q: When was the last Triennial Conference?

5 A: September, 2004.

6 Q: Would you please describe some of the general subject matters that have been  
7 discussed in the formal and informal meetings with the Attorneys General?

8 A: At the 2001 Triennial Conferences we gave a presentation regarding our YSP program  
9 efforts and introduced some preliminary results of our TABS research. We have continued to  
10 provide updated information regarding YSP as our programs have evolved. In subsequent  
11 meetings we have also discussed issues such as escrow payment procedures, funding for ALF,  
12 and implementation of a national sales tracking system. In our meetings in 2003 Philip Morris  
13 USA provided information regarding its efforts to reduce the harm caused by cigarette smoke  
14 and our continuing efforts to create reduced exposure products. At the 2004 Triennial  
15 Conference Howard Willard gave a presentation regarding our YSP efforts. We also discussed  
16 Philip Morris USA's efforts regarding the development of PREPs.

17 Q: Are there any other ways that the Attorneys General monitor Philip Morris USA?

18 A: As I have previously testified, the Attorneys General will regularly make inquiries  
19 regarding the MSA. Some of these questions are presented formally, but there are also a lot of  
20 informal communications with the Attorneys General.

21 Q: What does Philip Morris USA do when the Attorneys General raise a question  
22 regarding the MSA?

1 A: We do what we can to address the question. In many instances the Attorneys General are  
2 seeking facts in order to determine if specific business practices are in compliance with the  
3 MSA. There are also times when they have raised concerns about certain practices which we  
4 believe are in compliance with the MSA, but we still take actions to address the concerns raised  
5 in the spirit of cooperation with the Attorneys General.

6 Q: Let us talk a little about these inquiries. How does Philip Morris USA learn of an  
7 inquiry?

8 A: We have received documented inquiries from either NAAG or a particular Attorney  
9 General. There are also many instances when an Attorney General will raise a topic informally  
10 thorough a phone call.

11 Q: What is Philip Morris USA's policy or philosophy regarding responding to inquiries  
12 by the Attorneys General as to whether certain Philip Morris USA business practices may  
13 be in violation of the MSA?

14 A: Philip Morris USA strives to live by the spirit as well as the letter of the MSA. If the  
15 Attorneys General raise a specific business practice relative to the MSA, we listen to what they  
16 say, analyze the situation and determine if action should be taken. There are numerous examples  
17 of where we have taken action. Philip Morris USA maintains this philosophy regarding MSA  
18 compliance, because Philip Morris USA values its relationship with the Attorneys General and  
19 want to remain in alignment with what the Attorneys General expect of Philip Morris USA.

20 Q: Please provide an overview of the types of questions that were asked by the  
21 Attorneys General.

22 A: Early on, there were inquiries about billboards. There were MSA requirements that  
23 Philip Morris USA-rented billboards were to be turned over to the Attorneys General so that the

1 Attorneys General could place anti-smoking ads on the billboards for the remainder of the  
2 contract. We had to assist the Attorneys General in working with the billboard companies in  
3 accomplishing this. There were issues regarding billboards where our ad was covered over by  
4 new advertising, rather than being peeled off by the billboard company. Later, there were times  
5 when an old cigarette ad would be exposed if the new ad became damaged. Finally, there were  
6 some instances where retailers put up their own billboards to advertise cigarette prices. The  
7 Attorneys General asked our assistance in convincing the retailers to take them down, even  
8 though the retailers were not required to do so.

9 Q: What were some of the non-billboard inquiries raised by the Attorneys General?

10 A: As I recall, we had some inquiries regarding sponsorship, advertising and promotions.  
11 As we discussed earlier, we had communications regarding our media selection criteria,  
12 placement of ads on magazine back covers and our racing sponsorship. We have also addressed  
13 inquiries regarding certain Merit and Benson & Hedges advertisements. We also learned that  
14 magazines containing cigarette advertisements, such as Time and Newsweek, were being used in  
15 secondary schools, and had to take action. In all of these situations, Philip Morris USA worked  
16 with the Attorneys General to deal with the issue in a manner that was consistent with Philip  
17 Morris USA's Mission and Values and the MSA.

18 Q: Again, have there been any enforcement proceedings filed against Philip Morris  
19 USA?

20 A: No proceedings have been filed against Philip Morris USA.

21 Q: Again, have the Attorneys General filed enforcement proceedings against any of the  
22 other tobacco manufacturers?

1 A: Yes. It is my understanding that there have been proceedings against the other  
2 companies.

3 Q: What does that tell you?

4 A: A couple of things. First of all it tells me that the Attorneys General take the MSA very  
5 seriously and will take actions to enforce it. It is also satisfying because it tells me that we are  
6 doing a good job of communicating with the Attorneys General on issues regarding their  
7 questions and are complying with the MSA.

8 Q: I would like to discuss some of the specific questions that have been raised by the  
9 Attorneys General, in order to show the Court the type of dialogue and interaction that  
10 Philip Morris USA has with the Attorneys General regarding MSA issues. Do you recall an  
11 incident in Philadelphia involving a company called WaWa?

12 A: Yes I do.

13 Q: What is WaWa?

14 A: It is a retail chain with stores in Pennsylvania.

15 Q: Could you please explain what that issue involved?

16 A: The Pennsylvania Attorney General informed us that signage was being posted on  
17 billboards advertising Marlboro. Apparently WaWa was using the billboard advertisement as a  
18 means of informing customers of its price on Marlboro cigarettes. WaWa paid for the billboards  
19 and we had nothing to do with it.

20 Q: If Philip Morris USA did not pay for the billboards, why did the Pennsylvania  
21 Attorney General have a problem with the signage?

1 A: Under the MSA, Philip Morris USA is precluded from advertising on billboards and must  
2 take reasonable steps to ensure that third parties do not use our brand names in a manner that  
3 would violate the MSA if it were done by Philip Morris USA itself.

4 Q: Was Philip Morris USA in any way responsible for the billboards?

5 A: No.

6 Q: What did Philip Morris USA do?

7 A: We sent a letter to the Pennsylvania Attorney General and explained to him that we had  
8 not violated the MSA, that WaWa had funded the billboards, and that we had asked WaWa to  
9 respect the Attorney General's views.

10 Q: Showing you JD-045035, do you recognize this document?

11 A: Yes I do.

12 Q: What is this document?

13 A: It is a letter from Marty Barrington, our Senior Vice President and General Counsel, to  
14 Joel Ressler, an assistant to the Attorney General of Pennsylvania.

15 Q: Was this letter prepared in the ordinary course of business?

16 A: Yes.

17 Q: Did Philip Morris USA do anything else?

18 A: We agreed to work with the Attorney General to resolve the issue.

19 Q: Were you able to convince WaWa to change its billboards?

20 A: Yes.

21 Q: Earlier you testified that the Attorneys General asked questions regarding out-of-  
22 date billboards, correct?



1 A: Yes. There were some instances where an Attorney General would notice that a billboard  
2 had part of a Marlboro advertisement showing. These were old advertisements that had been  
3 covered over by advertisements for other products instead of being removed first by the billboard  
4 company. Sometimes the new ads would peel exposing part of the old cigarette advertisement.  
5 The Attorney General would ask us to remove the ad from the billboard.

6 Q: How would Philip Morris USA respond to these requests?

7 A: We would inform the company that owned the billboard that we needed the billboard  
8 removed pursuant to the MSA and then we would follow up to make sure it was removed.

9 Q: Did Philip Morris USA consider these questions serious?

10 A: We view any question that the Attorneys General have raised as a serious matter.

11 Q: Do you recall your prior testimony regarding a December 1999 meeting you had  
12 with certain NAAG representatives?

13 A: I do.

14 Q: During that same meeting, do you recall a discussion regarding a particular Merit  
15 ad that Philip Morris USA was using?

16 A: Yes I do.

17 Q: Would you please explain what discussion took place with the Attorneys General  
18 regarding this ad?

19 A: The Attorneys General were concerned that the advertisement might violate the MSA  
20 prohibition on cartoons.

21 Q: Showing you JD-055045, do you recognize this document?

22 A: Yes, this is the advertisement that the Attorneys General were concerned about.

23 Q: Does this look like a cartoon to you?

1 A: No it does not. But, as we discussed, the MSA definition of "cartoon" is quite broad.  
2 According to the MSA, anything that attributes extra-human or unnatural abilities is considered a  
3 cartoon. The Attorneys General were concerned that this advertisement fit that category.  
4 Q: Was there anything in this ad that would have any appeal to kids?  
5 A: Not in my opinion.  
6 Q: As a result of your discussion with the Attorneys General what did you do about this  
7 ad?  
8 A: I cancelled it.  
9 Q: Does this situation illustrate how carefully the Attorneys General monitor the  
10 advertising activities of the tobacco companies?  
11 A: I believe it does.  
12 Q: As the CEO of Philip Morris USA, how do you view this type of dialogue with the  
13 Attorneys General.  
14 A: I view it as a very positive development.  
15 Q: You previously testified that you corresponded with Attorney General Gregoire  
16 after meeting in December of 1999, correct?  
17 A: Yes.  
18 Q: And that letter was JD-042590, correct?  
19 A: Yes.  
20 Q: Did Attorney General Gregoire respond to your letter?  
21 A: Yes.  
22 Q: Showing you JD-053121 do you recognize this document?

1 A: Yes, this is the letter I received from Attorney General Gregoire shortly after our meeting  
2 in December of 1999.

3 Q: Could you please read the paragraph beginning "we look forward" ?

4 A: "We look forward to continuing dialogue with you and Philip Morris USA management  
5 to ensure full compliance with the spirit and intent of the Master Settlement Agreement. We,  
6 too, have responsibilities and welcome your thoughts and suggestions as to how we might better  
7 achieve them."

8 Q: Did Attorney General Gregoire make a comment regarding your personal  
9 involvement?

10 A: Yes. In the first paragraph, she wrote: "It was particularly important to us that you  
11 personally as well as other members of the senior management of Philip Morris were available  
12 for the meeting."

13 Q: What was the importance of this letter?

14 A: It demonstrated that we could have a constructive dialogue with the Attorneys General as  
15 we worked together to achieve both the letter and the spirit of the MSA.

16 Q: I want to move now to a question that was initially raised by Attorney General  
17 Robert Butterworth in 2001. Do you recall this incident?

18 A: Yes, I do.

19 Q: Who is Robert Butterworth?

20 A: He was once the Attorney General of Florida.

21 Q: What was the question Mr. Butterworth raised?

22 A: He was concerned that Philip Morris USA's program of distributing coupons to smokers  
23 constituted sampling.

1 Q: Could you explain the program?

2 A: The program was directed at adult smokers aged 21 years and older. Consumers who  
3 purchased cigarettes in a retail establishment were asked whether they were 21 years or older and  
4 whether they smoked. If they answered yes to both questions, and expressed an interest in  
5 receiving mailings from the company, then they were asked to provide government issued  
6 identification in order to verify their age. In consideration for providing the information smokers  
7 21 years and older received a coupon for a free pack of cigarettes. The coupon was only  
8 redeemable at a retail establishment by a retailer capable of verifying the person's age. Philip  
9 Morris USA never delivered cigarettes as a part of the program.

10 Q: Did Philip Morris USA believe the program complied with the letter and spirit of  
11 the MSA?

12 A: Yes. The program was directed at adult smokers and required collection of government  
13 issued identification.

14 Q: What, did Philip Morris USA do?

15 A: First, we modified the program to require a retail purchase, and then we allowed the  
16 program to expire.

17 Q: Did you inform Attorney General Butterworth of that fact?

18 A: Yes.

19 Q: Showing you JD-045791, do you recognize this document?

20 A: Yes, this is the letter Philip Morris USA sent informing Attorney General Butterworth  
21 that we had discontinued the program.

22 Q: Do you recall any issues arising regarding magazines that were being used in  
23 classrooms?

1 A: Yes.

2 Q: Could you please explain what happened?

3 A: In June 2003, one of the Attorneys General informed us that national editions of *U.S.*  
4 *News and World Report*, *Time* and *Newsweek*, all of which contained cigarette advertisements,  
5 were being distributed in secondary schools.

6 Q: What did Philip Morris USA do?

7 A: We investigated the issue. We learned that the publishers of these magazines apparently  
8 had a practice of supplying the administration of public school systems with excess copies of  
9 their magazines for distribution in classrooms. Philip Morris USA was not aware, at the time, of  
10 this practice. Obviously, we did not believe that we were doing anything wrong under the MSA  
11 because *Time* and *Newsweek* are adult publications that met our readership requirements.  
12 However, that was not the issue. The issue was how do we get the magazines out of the schools.

13 Q: Was Philip Morris USA aware that these magazines were being distributed in  
14 schools before being informed by the Attorneys General?

15 A: No, we were not.

16 Q: Let me direct your attention to JD-053086. Do you recognize this document?

17 A: Yes. It is a letter from the Attorney General of Maine to Denise Keane requesting our  
18 assistance with the issue of the distribution of these excess magazines in schools.

19 Q: Turning your attention to the last paragraph on page two, what does the Attorney  
20 General request of Philip Morris USA?

21 A: The Attorney General observed that Philip Morris USA had shown concern in the past  
22 regarding youth exposure to tobacco advertising. Accordingly, the Attorney General requested  
23 that Philip Morris USA intervene with the publishers of *Time*, *Newsweek* and *U.S. News &*

1 *World Report* and convince them to employ a process called "selective binding" so that  
2 magazines distributed in classrooms would not contain cigarette advertisements.

3 Q: What is selective binding?

4 A: Selective binding allows advertisers to place their ads in certain copies of the magazines,  
5 but not in others.

6 Q: What did Philip Morris USA do in response to this inquiry?

7 A: This issue came to my attention through the office of Attorney General Gregoire. I  
8 instructed my staff either to get the magazines in question to get our advertisements out of the  
9 magazines they were distributing in their school program, or to discontinue advertising in the  
10 magazines.

11 Q: What was the result of your personal involvement in this matter?

12 A: The magazines began to selectively bind their magazines to ensure that Philip Morris  
13 USA's cigarette advertisements were removed from magazines distributed to secondary schools.

14 Q: Did Philip Morris USA inform the Attorney General of its actions?

15 A: Yes.

16 Q: Showing you JD-053107, do you recognize this document?

17 A: Yes, it is a letter from Denise Keane to the Attorney General of Maine informing him of  
18 the actions we took on this issue.

19 E. PHILIP MORRIS USA HAS CREATED A COMPLIANCE  
20 DEPARTMENT AND TRAINS ITS EMPLOYEES REGARDING MSA  
21 COMPLIANCE

22 Q: How does Philip Morris USA ensure its compliance with the MSA?

23 A: MSA compliance is instilled in every employee through our Mission and Values. Each  
24 employee receives training on MSA compliance and the Mission and Values are constantly

1 reinforced. These principles are also reinforced in my annual State of the Business addresses and  
2 various employee publications. We have also created a compliance department that is charged  
3 with helping the company comply with all legal and regulatory requirements including the MSA.  
4 Our compliance department publishes a periodic MSA compliance review to catalog MSA  
5 compliance activities.

6 Q: How is the annual MSA compliance review generated?

7 A: Each department in the company is responsible for ensuring their actions are consistent  
8 with the letter and spirit of the MSA. Each department has a manager responsible for ensuring  
9 MSA compliance. That manager meets with our compliance department and reports on  
10 compliance on an ongoing basis and participates in the development of the annual review.

11 Q: Showing you JD-041836, JD-050566, JD-053079, JD-046586 and JD-055037, are you  
12 familiar with these documents?

13 A: Yes.

14 Q: What are they?

15 A: These are Philip Morris USA's internal MSA annual compliance reports reflecting the  
16 activities of the company with respect to the MSA during the first four years of the agreement.

17 Q: Who prepared them?

18 A: In the early years they were prepared by the Philip Morris USA legal department. Today  
19 they are prepared by the compliance department.

20 Q: Do you receive these reports, including the Executive Summary?

21 A: Yes.

22 Q: Do members of your Senior Team receive these reports?

23 A: Yes.

1 Q: Showing you the First Year Compliance Report (JD-041836) and turn to the page  
2 with the Bates-stamp number ending "3756," which has the heading "Executive  
3 Summary" at the top of the page, do you see that?

4 A: Yes.

5 Q: Could you please read the middle paragraph on the page bearing the Bates stamp  
6 number ending 3756?

7 A: "PM USA's objective was to comply with both the letter and spirit of the MSA. To  
8 support that objective, PM USA created and delivered broad training to over 1,800 PM USA  
9 employees, to employees of affiliates, and to numerous outside vendors. Our goal was to  
10 develop high corporate awareness of the MSA and the business activities it affects. That training  
11 has enabled the business to own the compliance process and to be alert to potential compliance  
12 issues, all as assisted and advised by our Department's lawyers. In addition, PM USA identified  
13 the steps necessary to implement the MSA. Our actions to fully educate PM USA are described  
14 in more detail in Sections IIA and IIB below."

15 Q: Is this consistent with your understanding of the steps that Philip Morris USA took  
16 during the first year of the MSA?

17 A: Yes, it is consistent with Philip Morris USA's efforts to comply with the letter and spirit  
18 of the MSA.

19 Q: Please turn to JD-053115, which is the Master Settlement Compliance Report for  
20 2002, dated November 2, 2002, and turn to the page ending in bates number "5589."

21 Could you please read the third paragraph under the heading "Executive Summary"?

22 A: "The first year's Report, which covered activities for calendar year 1999, identified  
23 changes PM USA made to comply with the MSA. The 1999 Report detailed the compliance



1 activities PM USA developed from the interpretation of the provisions detailed in the MSA. The  
2 second year's Report, which detailed activities for the year 2000, focused on the spirit of the  
3 MSA and also the system of controls audits, and monitoring which was implemented to assess  
4 compliance. The 2000 Report centered on actions taken by PM USA to achieve societal  
5 alignment, which in many instances exceeded the requirements of the MSA. The third Report,  
6 covering calendar year 2001, focused on PM USA's continued commitment to comply with the  
7 MSA and its activities related to corporate culture, payment obligations and relationships with  
8 the Attorneys General ("AGs") of various states."

9 Q: Is this summary consistent with your understanding of what Philip Morris USA  
10 accomplished in its first three years under the MSA?

11 A: Yes.

12 Q: Keeping with JD-053115, the 2002 report, please turn to the next page ending in  
13 Bates number 5590, where the paragraph at the top states: "This 2002 Report focuses  
14 primarily on the activities of the Sales, Marketing, Corporate Affairs, Youth Smoking  
15 Prevention ('YSP'), Finance and Law departments as they relate to compliance with the  
16 MSA and four SSS." Do you know what SSS stands for?

17 A: It is typically used to refer to the separate state settlement agreements.

18 Q: Could you please finish reading the paragraph?

19 A: "As in previous years, these Departments continued their efforts to achieve 'gold  
20 standard' compliance with the MSA and four SSS. In certain circumstances, these Departments  
21 exceeded the requirements of the MSA and four SSS by strengthening their existing  
22 infrastructures to further enhance communications, training, and corporate and social compliance  
23 programs."

1 Q: What is the time period covered by these reports?

2 A: 1999-2003.

3 Q: Earlier you mentioned that Philip Morris USA trains its employees on MSA

4 compliance, do you remember that testimony?

5 A: Yes.

6 Q: How is Philip Morris USA training its employees regarding MSA compliance?

7 A: Philip Morris USA conducts a variety of programs to ensure that our employees are

8 aware of the company's compliance policies and activities. I should also add that we provide

9 training to our third-party business partners as well.

10 Q: What are the principles conveyed in the employee training?

11 A: Philip Morris USA uses extensive training to communicate to employees the terms of the

12 MSA and Philip Morris USA's commitment to both the letter and spirit of the MSA.

13 Q: What has Philip Morris USA done to train its employees regarding MSA

14 compliance?

15 A: We set up an initial program that was intended to cover a broad base of employees and

16 ultimately trained all exempt Philip Morris USA employees in what used to be our New York

17 office, the Operations Business Team and its direct reports. We also provided more in-depth

18 training for the entire marketing department and the entire sales force. MSA training has also

19 been incorporated into our new-hire orientation so every new employee is trained on the MSA.

20 Q: Why did the marketing and sales groups receive in-depth training?

21 A: Because the MSA has a number of restrictions that directly relate to sales and marketing.

22 So while it was important to train everyone, it was particularly important that the sales and

23 marketing people receive very detailed training on their MSA requirements.

1 X. WRAP UP

2 Q: Mr. Szymanczyk, we have spent a lot of time discussing changes in Philip Morris  
3 USA's current business practices since you became CEO in 1997. To what do you attribute  
4 these changes?

5 A: I think the central item has been our single-minded focus on our Mission and Values.  
6 They are well understood throughout the company and we have used them as the basis for  
7 recruiting new talent and promoting people to leadership positions since they were put in place in  
8 1998. Since it is the people of Philip Morris USA that actually have gotten the things  
9 accomplished that I have described in my testimony, I would conclude that our accomplishments  
10 are due primarily to our employees commitment to the company's Mission and Values.

11 Q: Based on your testimony you have obviously been very instrumental in Philip  
12 Morris USA's current business practices, would that be accurate?

13 A: I wrote the company's Mission, and I ensured that it has been promulgated and supported  
14 throughout the company. I have tried to be a leadership model in demonstrating our core values  
15 to employees. But as I just stated, I believe it is our employees' commitment to the Mission and  
16 Core Values that has allowed us to make the progress we have made. I believe the Mission and  
17 Core Values have become part of the corporate culture of Philip Morris USA as a company. My  
18 goal was to institutionalize the Mission and Core Values so that if individual Philip Morris USA  
19 employees were not in compliance with them, their conduct would stand out and be considered  
20 abnormal. I believe I have accomplished that.

21 Q: Mr. Szymanczyk, are you generally aware that the DOJ has alleged that Philip  
22 Morris USA engaged in a variety of misconduct in the past?

23 A: Yes I am.

1 Q: If you were to leave Philip Morris USA tomorrow, do you believe that it would  
2 continue to move forward in its current direction in a way that it is consistent with its  
3 current Mission Statement and Core Values?

4 A: Yes. I believe the Company would continue to move forward in the same way it is today,  
5 but I believe its rate of progress will increase, with or without me, because our organization gets  
6 better each day. I believe this because, as I previously testified, virtually all of the senior  
7 leadership of the company has been selected and positioned by me. In addition, I believe this  
8 because over one-third of the entire salaried population of the company has been hired since we  
9 put the Mission in place. My belief is that if anyone were to attempt to engage in widespread  
10 corporate misconduct, the management team that we have in place now or in the future would  
11 simply not permit such conduct to occur.

12 Q: Based on what you have described in your testimony, do you believe there is a  
13 reasonable likelihood that Philip Morris USA would engage in fraudulent conduct in the  
14 future?

15 A: No.

16 Q: Thank you, Mr. Szymanczyk.